

Real Money Trading in MMORPG items from a Legal and Policy Perspective

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I . Introduction

MMORPGs (Massively-Multiplayer Online Role Playing Games; some of the most prominent titles are Lineage I, II², Mabinogi, World of Warcraft (WoW)) have recently become an object of social and legal controversies of a previously unheard-of type. The phenomenon of trading in-game MMORPG items for real money has raised thorny issues on the ownership status of these virtual objects. This phenomenon has hardly escaped the people of South Korea, a frontrunner in the development of online games of this genre³ as well as their chief exporter.

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² According to an October 4, 2004 article in *The Digital Times*, NcSoft’s Lineage II, then one year into service, numbers 3 million subscribers with up to 125,000 players logged on simultaneously.

³ Nexon’s graphic MMORPG The Kingdom of the Winds was rolled out in April of 1996 (image omitted).

Discussions on RMT (real money trading) in MMORPG items in South Korea, however, have thus far failed to give rise to an impartial, in-depth understanding of the issue. This is partly due to the fact that many MMORPG players have traditionally been teens and young adults in their early to mid twenties, and that MMORPGs were stigmatized as hotbeds of cybercrime.⁴ The overriding concern with regard to RMT, therefore, have been its immediate social repercussions,⁵ inciting Koreans to hurriedly take stance on the phenomenon, before even its full implications were properly explored. In hindsight, I realize that I myself was not immune to this knee-jerk reaction, and that some of the positions I espoused in my past internet publications demonstrate a prescriptive approach, sometimes at the expense of a dispassionate and objective assessment of this phenomenon.

Unlike in the US and other parts of the world where discussions on the legal status of in-game MMORPG items and RMT are so far confined to the academic community and still at a budding stage,⁶ in South Korea, a good number of court judgments and administrative rulings in related cases exist already, providing a sizeable pool of precedents.

⁴ Unofficial statistics of lower court judgments in MMORPG-related cases over the period between July of 2002 and October of 2004 (the estimates are based on only those cases registered in the internal database of the South Korean court system and were produced through a keyword search without verifying the content of individual judgments, unavailable through this method. These estimates may contain redundant data or have omitted certain other relevant data. For this reason, all estimates must be considered privileged and unofficial and may not be quoted in any way whatsoever.):

Total Number of Criminal Cases Ended in the Conviction of the Accused, on Charges of Fraud, 'Fraud through Computer Manipulation' or Violation of the Act on Promotion of Information and Communications Network Utilization and Information Protection: 480 (104 of them are juvenile cases and 101 resulted in prison sentences)

Lineage I & II: 340 cases

Mu: 136 cases

Lagnarok: 3 cases

Legend of Darkness: 1 case

⁵ According to a 2004 report submitted by the Ministry of Culture and Tourism to National Assemblyman Woong-Rae Roh (Uri Party), in the context of a parliamentary inspection of government offices, the in-game item market grew more than 50% over the previous year, from an estimated KRW 450 - 500 billion to KRW 750 - 800 billion ("MMORPG Item Trade Market Hits KRW 800 Billion," *Sports Hankook*, Oct. 2, 2004).

⁶ In the US, the *Black Snow Interactive v. Mythic Entertainment* (Feb. 5, 2002) case was settled before trial, thus leaving no court precedent. The lawsuit was brought by an auction site selling MMORPG items and user accounts, named "Black Snow Interactive," against Mythic Entertainment, a MMORPG developer and publisher, for alleged violations of a number of federal laws including antitrust laws. The plaintiff, in its petition to the court, stated as follows:

In this paper, I invite my readers to temporarily suspend their judgment on RMT, whether on the basis of principle, moral standards or from a practical point of view, to go back to some of the essential questions concerning this phenomenon that we failed to ask in the flurry of controversy. What are in-game MMORPG items precisely? What legal status may be granted to RMT? I will discuss different existing views on these issues, critically examine related rulings and present my own opinions on them. Through this modest first attempt to shed light on RMT, as the author of this paper, I hope to elicit a debate on the issue and galvanize our society's understanding of this unprecedented phenomenon.

II . Legal Characteristics of In-Game MMORPG Items

1. Being: In-game Items as Virtual Properties

This is a scene I happened to witness in 1999, in a local police station, somewhere in Seongdong-gu of Seoul. A game arcade owner called police on two high-school kids. The two lads, now taken into custody by law enforcement officers, were sitting on their knees with their arms held up above the head, in a posture of atonement ostensibly ordered by the latter. The charge brought against them was fraud. The two youngsters, I was told, took money from a Lineage gamer for a number of in-game items that they promised, but never intended to deliver. The officer responsible for investigating this case was himself a Lineage player. He apparently collects evidence leading up to a case through his own in-game character. Victims of fraud, who know the officer's in-game character, at times contact him through the dialog window inside the game, to present their cases.

In the police station, however, nothing was virtual. The officer in question was taking a statement from the two adolescents just as one would expect to see for any other ordinary misdemeanor or felony cases. He asked the boys questions and typed their answers into the

"The main question is whether it is MMORPG players who have rights to the time they invested in the game or whether it is Mythic Entertainment who owns the player's time. It is unfair for Mythic Entertainment to put a stop to players' desire to sell in-game items, cash or user accounts they own. This is because these items, cash and accounts were created through time invested by players. In my opinion, the court would err, if, in the exercise of its sound discretion, it chose to rule in support of the game developer/publisher's claim, on the basis of copyrights, to the right to regulate or restrict how these fruits of the time players invested may be used, or decide their values in a free market. < Lee Caldwell, Director of Blacksnow Interactive>

computer, as I was looking on. One thing that arrested my eye was that the statement read that “the suspects promised to provide one Japanese sword, one shield and one cape” to the victim. Here, I couldn’t resist the urge to butt in and suggested to the officer to insert “in-game items” before the list of weapons. “Lest people who are not familiar with MMORPGs think that the lads are part of some new kind of Yakuza gang,” I said in an attempt to add a humorous note.

This little anecdote is just one of many instances that came to my personal attention, where legal documents, including transcripts of rulings, made little or no distinctions between in-game MMORPG items and real-world objects, of which the former are mere simulacra. A simple search in the court database for related precedents can confirm this tendency. Game items like swords or bombs are presented as real swords or bombs and are even treated as such, in some rare cases where larceny laws are applied to these virtual objects.⁷

Unlike false-pretense theft, extortion or blackmail, or robbery, whose objects include ‘financial profits,’ in addition to tangible personal property, larceny is an offense only concerned with personal property. Hence, applying larceny-theft to in-game items is tantamount to equating these items with actual objects or goods.

According to the July 12, 2002 ruling of the Supreme Court (judgment No. 2002-*do*-745), the appropriation of data stored in a computer does not constitute larceny, insofar as this offense exists only where the property taken is tangible personal property including controllable power or energy. Information stored in a computer, in other words, neither constitutes tangible property nor possesses power or energy of a physical nature. The Supreme Court further ruled that, whereas larceny, which is a wrongful carrying away (asportation) of personal property, permanently depriving the possessor or owner of the possession or use thereof, the act of copying or printing out data stored in a computer in no way diminishes its value or the victim’s possibility of owning or using it.

⁷ See the March 25, 2003 judgment of the Suwon District Court (judgment No. 2003-*godan*-980). The text of decision reads: “On September 19, 2002, Defendant was solicited by Myeong-ho Kim, an individual Defendant befriended through Green Game Arcade, located in Pohang, near Pohang Train Station, where they together played MMORPG Lineage, to help the latter’s character move up to a higher level. Defendant broke into the account of the victim, a friend of the aforesaid Myeong-ho Kim, whose user login ID (thcjstk001) and password were known to Defendant. Defendant took possession of game items in the victim’s inventory, including five pairs of iron boots, five protection capes, five t-shirts and five pairs of ‘power gloves,’ whose combined value amounts to KRW 650,000, by moving them to Defendant’s own account (user ID: nollaenolkkanolja)…”

In-game MMORPG items, although similar to computer data in question in the above precedent, are nevertheless distinct from the latter, in that these virtual images, graphic renderings of real objects, are comparable to their real-world counterparts in their independence and specificity. They are regarded as objects in exclusive possession and control of players who acquired them. Also, item data, when they change hands, are transferred rather than duplicated. Furthermore, similar to physical objects, the transfer of in-game items to another player completely deprives its initial owner of their use.⁸ In-game items, however, are devoid of ‘tangibility,’ an essential attribute of property. Moreover, the control a gamer has over in-game items⁹ is not identical in nature to the physical control exercised by an owner over his or her tangible personal property. These characteristics make traditional personal property laws ill-suited for application to in-game items.^{10 11} Indeed, if one were to equate in-game MMORPG items with their real-world counterparts, why shouldn’t one grant the status of real property to territories of Aden in Lineage or domains in Norrath in EverQuest?¹²

Thus far, however, in the vast majority of criminal cases involving MMORPGs, wrongful appropriations or misappropriations of in-game items have been treated as ‘fraud through computer manipulation’ or crimes against information systems and computer data under the Act on Promotion of Information and Communications Network Utilization and Information Protection, rather than as larcenies.

What then is the legal nature of in-game MMORPG items, if they cannot be regarded as property? Answering this question requires understanding what precisely MMORPGs are.

⁸ Article 98 of the Civil Act (Definition of Goods)

For the purposes of this Act, the term “goods” means tangible entities and manageable natural energies including electric power.

Article 99 (Real Estate and Movables)

(1) Real estate is a piece of land, including all buildings or structures on it.

(2) All objects that are not real estate are movables.

⁹ Control over a game item is maintained through a continuous exchange of data and commands between the game server and the client in the player’s PC. The physical location of in-game item and character codes and game environment-related data is not the client-side computer, but the database server operated by the MMORPG publisher/operator, where they are continually updated.

¹⁰ Jong-pil Byeon, ‘Online Game Items and Crimes against Property’ (Internet Law No. 5, Ministry of Justice, Mar. 2001).

¹¹ It is not impossible, from a legislative perspective, and thus not an interpretative perspective, to treat certain types of information as properties (refer to the section of the Uniform Computer Information Transactions Act (UCITA), on the definition and treatment of ‘computer data’). However, RMT should not be a reason for a special legislation recognizing MMORPG items as property. I provide reasons why I believe this is wrong below in the sections of this paper dealing with RMT.

¹² There have been cases where lots inside a virtual space have been sold for real money to MMORPG players. This happened in Dadaworlds in 1999, and in Second Life, an American MMORPG, in 2004.

The Supreme Court held in a 2001 ruling (judgment No. 2001-*do*-3018), in a case involving Lineage that the online game falls into the category of “other games” under Article 2, Item 3 of the Act on Recorded Music, Video and Game Products and Article 3, Item 3 of the Enforcement Decree to the same Act. “Game products” are defined by this law as computer programs, other video products or devices using information processing technologies or related mechanical apparatuses, designed to serve entertainment purposes and other purposes incidental to them, such as meeting leisure-related needs or providing learning support or enhancing fitness and exercise efficiency. MMORPGs, in other words, are considered computer programs, which, broadly classified, belongs to the category of copyrighted material.

What then are in-game items? The term “item” in the computer parlance refers to the smallest unit or article of data constituting a file. Meanwhile, in-games items mean a variety of articles used while playing a MMORPG.¹³ The status of in-game items, as objects of property rights, thus, is no more than that of the information constituting a game program as a subordinate part of a whole. Hence, in-game items can neither exist independently of a game program nor transcend or dominate the latter.¹⁴

The independence of in-game items and the possibility of exclusive control over them, that we mentioned earlier, making these virtual objects seem so similar to personal property, are attributes these items are endowed with only within the game environment, thanks exclusively to the game service so conceived, which, therefore, cannot outlast such environment. In-game items, for this reason, cannot claim the status of a good or property, and are simple functions within an intellectual property known as a game program (one of the absurd consequences of regarding in-game items as properties is that this will make games an intellectual property containing inside them tangible properties, a type of property entirely distinct from themselves, thus blurring the boundaries between rights over tangible personal properties and intellectual properties).

Having said that, it is not at all unreasonable to consider, in a legislative context, granting certain types of information the status of traditional property or objecthood recognized in civil and criminal laws. Such a move may even be called for in the dawning digital age.¹⁵ However,

¹³ In the Lineage terms of service, NcSoft defines game characters as ‘game data that are selected and controlled by users inside the game environment’ (see § 4 (1) 6 of the Lineage Terms of Service).

¹⁴ Hae-sang Jung, ‘Legal Controversies Surrounding Online Game Item Trading,’ *Legal and Policy Issues Facing the Game Industry: 2004 KITAL (Korea Institute of Technology and Law) Symposium Papers*, June 2004, pp. 147.

¹⁵ On this topic, refer to Dae-heon Bae, “Information as Digital Property and Expanding Notion

if an initiative of this kind is prompted by controversies surrounding MMORPG items and the fact that these items are bought and sold for cash in a market of their own, acquiring independent economic value, such reasoning, in my opinion, is resting on a wrong premise, a view I will further expound on later in this paper.¹⁶

2. Who Owns Them?

As has been made clear in what precedes, in-game items are neither a good nor property, and, hence, cannot be regarded as objects of ownership. This is true for players as well as for developers and publishers of MMORPGs. If so, why is that we see developers and publishers claim rights over these items? Where do they derive such rights? The rights MMORPG developers and publishers assert are not over in-game items as physical and tangible goods, but as intangible property. These rights, in other words, stem from an altogether different right system, known as intellectual property rights (copyright, trademark, patent rights, trade secret, etc.).

For example, Article 16 of the Lineage terms of service stipulates, “All rights to in-game data including and not limited to characters and items are exclusively owned by NcSoft Corporation. Characters and items may be added, deleted or modified at the discretion of NcSoft, without further notice, when deemed necessary for the sake of production or operation of the game.” The “rights” claimed here, hence, not to be confused with traditional property rights, based on an understanding of data as goods, are indeed intellectual property rights.

Most MMORPG developers and publishers reserve copyrights to in-game items and characters. A recent judgment by the Seoul District Court (judgment No. 2002-*kahap*-2377) upheld the rights of MMORPG developers and publishers, ruling that copyrights to the computer program, characters, items and screen images, enabling and constituting a game, belong to their developer.¹⁷

of Goods,” (paper presented at the Oct. 11, 2002 seminar hosted by KISDI, titled “A Legal Framework for an Information Society”).

¹⁶ Under my own ‘theory of ‘gwonri-geum’,’ presented in the later section of this paper, the object of RMT are not ‘items,’ a self-contained and static entity, but are more fluid and dynamic realities, in the image of ‘game play’ itself. The question whether in-game items are information or goods is an issue, in my view, that is not directly relevant to the understanding of RMT.

¹⁷ MMORPGs, as a copyrighted material, possess the characteristics of both literary works and functional works.

Meanwhile, this position of MMORPG developers/publishers enjoys little support from the gamers' community, many of whose members feel that items acquired during game play legitimately belong to their acquirer. MMORPG players, for instance, frequently use terms like "earn," "win," "sell" and "borrow" referring to items like currencies, swords and shields, obtained by successful capturing or defeating in-game monsters, as though these items are personal possessions. Two very obvious rebuttals one can bring against this player-side claim are that these items cannot be personal possessions and that legal titles to these items belong to their developers in the form of copyrights. Hence, the rule of first possession, recognized to capturers of game animals, may not be applied to trophies won within online games.¹⁸

In MMORPGs serviced in South Korea, program sources of in-game items, their functional and attribute data and graphic visualizations are released in a completely or nearly completely finished state by their developers. These items are visualized, when a player, through interaction with other players, meets the required conditions set by the programmer (ex. killing a monster), suddenly appearing next to the corpse of the slain monster. These games are so programmed that, when the player clicks on the loot, the item is moved to his or her inventory, giving the latter the exclusive right of use over it. Hence, rights to game items, concerning their data or as original copyrighted works, belong to first and foremost to their developer.

There have been no known cases where a MMORPG company ceded its rights to a game program to players, whether through sale or other forms of transfer of ownership. Standard terms of service agreements grant only the right to use a MMORPG service against a set fee. In other words, the legal scope of a MMORPG terms of service agreement is limited to the use of in-game items and the overall game service. New business models that are more recently introduced to the MMORPG market, whereby players use the game program free of charge, but rather pay for game items, are not radically different from the traditional model. They merely shift the paid portion of the service, from the overall service to items, without fundamentally

As for in-game items, such as swords, shields, rings and garments, they tend to be quite similar to one another. It is thus questionable whether these items satisfy the criterion of creativity required by copyright laws.

¹⁸ Article 252 of the Civil Act (Ownership in Unowned Property)

- (1) One may acquire ownership of unowned movables by occupying them with the intention of possession thereof.
- (2) Ownership of unowned real property belongs to the state.
- (3) Both wild animals and captive-bred animals returned into the wilderness shall be considered unowned.

changing the nature of the contract, which continues to concern only the use of a service and associated items.¹⁹

To sum up, the rights of ownership over MMORPG items primarily belong to their developers, and the rights of players are limited to the use of these items, as conferred by the terms of service. The idea that game items are objects of exclusive possession of a player, freely transferred to another player or exchanged against equivalent items by in-game characters who acquire them is merely an impression, due partly to the environment proper to this online game genre, giving gamers a sense of autonomy and control and making them easily oblivious of the existence of a developer.

The same is true for items produced inside a game through crafting, rather than captured through hunting. To take the example of Mabinogi, characters can learn blacksmithing or sewing, to make a sickle or garment out of metal ores or fabric they come across or obtain by bartering with other characters. Crafting therefore means creating higher-level items, using skills acquired inside the game.

Just as the rule of first possession may not be applied to game items earned through slaying a monster, ownership by processing, one of the modes of acquisition of ownership recognized under civil law, would not be applicable to these items, for the same reason that these objects are not real.²⁰ Crafting within a game environment is like any other action performed during game play. Materials used for crafting as well as the skills enabling it have no more reality than their visualization on a computer screen. Data making up items that are completed through crafting and stored in the user account, linked to the character played by the latter, consist of codes, functions and designs created by the MMORPG developer. By 'crafting,' the player simply executes pre-existing functions, and such execution is not a creative act, or at least not creative enough to be able to claim intellectual property rights and does not add new value to the works by the developer.

¹⁹ Gang-jin Paek, in his essay "Responsibilities of MMORPG Developers and Publishers" (2004), states; "... it is unreasonable to argue that, on the basis of rights conferred by a MMORPG's terms of service, rights (copyrights) to MMORPG items created using the software of which the right-of-use was granted by the same agreement are transferred to users."

²⁰ Article 259 of the Civil Act (Processing)

(1) With regard to a movable that has been processed by a third party, the owner of the raw materials retains the rights of ownership over the item. Notwithstanding, if the value added by said processing, exceeds that of the raw materials, in a substantial manner, the rights of ownership over such movable, shall, henceforth, belong to the party who processed it.

Inversely, following the same logic, one may also argue that players are entitled to those items to which they contributed their creativity or that exist chiefly a result of it. The argument indeed is not at all devoid of reason.

In Mabinogi, for example, the system supports input of music scores by characters. Players can have their characters learn a musical instrument and perform their own compositions. These compositions, when performed, can be heard by other players that are logged in. Meanwhile, bookstores inside the game carry novels and adventure chronicles authored by players, that can be purchased using in-game cash.

Concerning game items that are entirely original creations of players, the latter's relationship to the MMORPG publisher is comparable to that between bloggers and the blog operator, and between authors and the developer of a word processor. The rights to these items belong to the players who created them, and the developer of a MMORPG publisher, if it wishes to use any of them, would have to obtain the permission of their creators.²¹ Such arrangements are already being practiced in Second Life,²² an American MMORPG. A substantial portion of in-game items in Second Life are created by its players, using production tools provided by the game program. Players design their appearance as well as functions. These items apparently can be personally owned and sold or traded within the game.

In the case of EverQuest by SONY, the terms of service contains a clause declaring that all rights to user-created content are automatically surrendered to the publisher of the game:

Any and all creative suggestions, ideas, notes, drawings, concepts or other information that you send to us, whether at our specific request or despite our request that you not do so ("Submissions") and any and all Licensed Content shall be deemed, and shall remain, the property of SOE from the moment of creation. Accordingly, SOE shall exclusively own all now known or hereafter existing copyrights and all other intellectual property rights to all Submissions and Licensed Content of every kind and nature, in perpetuity, throughout the universe. To the extent that any of the above may be void or unenforceable, you agree that

²¹ The right system, in this case, is a two-way system. In other words, the copyright holder-authorized user relationship would exist at two levels: between a MMORPG publisher and players concerning the game platform, and between players and a MMORPG publisher concerning user-created content. The remaining question is how these two independent laws, copyright law and contract law, can be harmonized for practical application.

²² <http://www.secondlife.com>

any and all Submissions and Licensed Content are hereby irrevocably assigned to SOE, together with all intellectual property rights therein.

Korean law would regard such a claim, as set forth by the above-quoted clause of the SONY Entertainment's terms of service, as excessively infringing upon players' rights as authors (intellectual property rights, moral rights), protected under copyright laws, mandatory rules of law. Korean end-user service agreement laws further condemn this type of 'deemed customer consent' as illegal.²³ Second Life took quite an opposite stance to EverQuest, amending its terms of service, in late 2003, to acknowledge players' copyrights on content authored by them.²⁴

5.3 Participant Content. Participants can create Content on Linden's servers in various forms. Linden acknowledges and agrees that, subject to the terms and conditions of this Agreement, including without limitation the limited licenses granted by you to Linden herein, you will retain any and all applicable copyright and/or other intellectual property rights with respect to any Content you create using the Service.

In conclusion, MMORPG items are intangible realities, and intellectual property rights to these articles generated within a game environment may belong to either the publisher or the players who created them, depending on their relative contributions in terms of the attributes, functions and design of a particular item, and the programming that enables its visualizations and the execution of associated behaviors. Currently, in most commercial MMORPGs, including Lineage, Mu and Lagnarok, with the exception of Mabinogi, players are allowed to acquire game items only through capture and crafting. What this state of affairs suggests is that rights to in-game items, in other words, their control, are in the camp of publishers. Rights recognized to players, concerning in-game items, therefore, are simple rights-of-use, that they acquire against a payment (this will remain the premise of my discussion of MMORPG items throughout the rest of this paper).

²³ In recent years, there have been in South Korea controversies concerning terms of service used by certain blog operators including Naver Blog and Cyworld Paper, which contained clauses granting the operators exclusive rights over content created by website participants. Cyworld eventually accepted to revise related section of its terms of service. See the Oct. 8, 2004 ZDNet Korea article relating the unfolding of the Cyworld Paper affair.

²⁴ On the subject of virtual worlds centered on user-created content, see the highly illuminating article by Cory Ondrejka, a researcher at Linden Lab and the developer and publisher of Second Life, titled "Escaping the Gilded Cage: User Created Content and Building the Metaverse."

III. Using MMORPG Items in In-Game Environment

1. Acquisition and Use of In-Game Items

In most MMORPGs, game items are acquired through hunting or crafting. Items so acquired become stored inside the character's inventory and can be carried or used by the latter to assist his or her future adventures and enterprises (hunting, quests and crafting), or sold or exchanged through the trade window; activities that give rise to a virtual economy within a game.

MMORPG characters' ability to prevail in various competitions inside the virtual world depends on their levels, which are a measure of their experience, skills level and the functions of the items available in their inventory. Game items are assets decisively determining the outcome of not just duels against computer-controlled characters such as monsters, but also and more especially jousts between player-controlled characters, called PVP.²⁵

With powerful items, players can have their characters approach dungeons guarded by monsters or hunting grounds prowled by ferocious beasts, which they, otherwise, may not dream of venturing into. Sometimes, certain dungeons and hunting grounds are not accessible at all without a specific item.

While this varies from game to game, depending on their system architecture and setting, in games like Lineage, Lineage II and Mu, prominent titles capturing the largest shares of the Korean MMORPG market, items owned by a character affect far more the efficiency of hunt, his or her ability to accumulate in-game wealth and the outcome of a PVP combat than the level or skills.

Hence, high-performance in-game items or 'rare items' as they are commonly referred to, play a role similar to production goods (insofar as they increase the odds for successful hunt) in the real world, as opposed to consumer goods, or serve as licenses (allowing access to sites inhabited by more powerful monsters which can help raise experience scores and yield more and better treasures). They further are valued as a status symbol within the virtual world, as

²⁵ Person v. Person

they are tokens of high play levels and of having carried the day in PvP, important for the reputation of a player.²⁶

2. In-Game Transfer of Rights of Use

A. Overview

Game items are generally expressed and treated as independent units. While certain game items are enabled for in-game transfer to other characters, certain others may not change hands, this, depending on the game and developer.

When a trade window is opened, items that may be traded can be transferred to other characters using a variety of methods, including moving them with a mouse click or dropping them to the area outside the window. Most items in the greatest majority of Korean MMORPGs, including Lineage, are allowed to be traded between characters. These games provide trade windows and other tools for item transfers. Stimulating the game item economy, thus, appears to be part of the design intent in these games.

One of the few MMORPGs where transfer is partially disabled, concerning certain items (most often rare items), is WoW (World of Warcraft). Having made its debut with an open beta service begun in November 12, 2004, Wow had substantial repercussions in the MMORPG world.²⁷

Taking possession of a game item is equivalent to the acquisition of a portion of game content under a use relationship, similar, in essence, to borrowing. The right to use an item, while part of the right to use the overall game service, may be also regarded as independent of the latter and exercised independently from the latter.²⁸ The system design allowing free transfer of

²⁶ A Lineage player known under user ID “Poseidon,” playing a character of the same name at level 79, the highest level ever reached in all Lineage servers, is well-known among peer players and enjoys a high reputation.

²⁷ In WoW, this is called ‘Item Ownership System.’ Items are divided into three categories: those that may be freely transferred to other characters, those that permanently and exclusively belong to their first acquirers and cannot be transferred to others, and those that may be transferred by their first acquirers, if they were not already worn or carried, and cease to be transferable once worn or carried by any of the owners in the forwarding chain.

²⁸ The explanation of the act of acquiring in-game MMORPG items provided by Hae-sang Jung in a passage of his paper “A Legal Analysis of MMORPG Actions” that reads; “the acquisition of an in-

game items within the MMORPG environment may be understood as a tacit or implied consent by the developer to this practice, like a lesser giving the lessees the permission to sublease the leased property in advance.

A one-way transfer of an item through the trade window would constitute gifting, whereas, when another item is provided in exchange for an item, this is the so-called in-game sale, resulting in an exchange of rights of use. A character would, for instance, trade an ax for a magic spell sheet or in-game cash.

What changes hands through in-game gifting or exchanging of items between characters is the rights of use with regard to the same items. These external characteristics make in-game transfers appear similar to their real-world equivalents such as exchange and sale, that are acts with legal significance and consequences.

As to whether in-game transfers should be given a legal significance on a par with real-world transfers of rights, opinion remains split. “Gaming takes place within a virtual world. This makes intents declared within an in-game environment also virtual. Hence, legal significance assigned to real-world acts of transfer cannot be recognized for these virtual acts. Disputes occurring within an in-game environment, therefore, must be settled according to the internal rules specific to a given game. Issues relating to transfers of control over game items within a virtual space lie outside the domain of real world laws, which may be extended only to the control of game items by a user and the contractual relationship entered into between a user of a game service and its provider, says Hae-sang Jung in a paper discussing MMORPGs.²⁹ Let us linger a few moments over the question of legality of intents declared in-game, a pivotal point in the debate of RMT meriting a detailed scrutiny.

B. Legal Significance of In-Game Declaration of Intent and Transfer of Rights of Use

MMORPG players communicate with each other via their characters, using a dialogue balloon or a dialogue window. Human interaction of this type is one of the chief differences distinguishing MMORPGs from traditional package games, played between a human player and a computer. Inter-player interactions are most often to discuss quests and dungeon hunts in

game item...is that of a right-of-use over this item, allowing its acquirer to freely move it from one user account to another” appears only valid with regard to items for which MMORPG publishers expressly allowed in-game transfers through system settings enabling them.

²⁹ Ibid

which their respective characters take part, decide who gets the first dip in the loot acquired through a team effort, trade items, share in-game information and exchange opinions on the related issues. It is also not uncommon that MMORPG players develop friendship with their peer players and converse on topics other than those concerning in-game situations.³⁰³¹ This type of inter-player interaction, strictly-speaking, is in breach of the tacit contract between players of a MMORPG as well as between players and the developer, committing the former to an engrossment and absorption into the virtual world within the game (players, in other words, must become oblivious of the outside world and stick to the context specific to the game, much like a film or theater spectator is not supposed to note artifices intended to make the drama life-like (ex. wires keeping an angel suspended mid-air) or act in a manner to interrupt the suspension of disbelief (ex. answering a cell phone during a period piece).

Those who subscribe to the view that declaring one's intent within an in-game environment through text windows, although essentially identical to the way people express their intentions in the real world, is not to be taken as a manifestation of an inner intention, aimed at certain legal effects and is, furthermore, not a legal fact, an indispensable component of any legal action, often bring up three common arguments: First, the intent declared by a MMORPG user is directed to an invisible party behind a character. Second, the text window within a MMORPG is provided by the developer for entertainment purposes and due to the special characteristics of this genre requiring communication between players, and is, therefore, merely part of the game play. Third, by logging into a game server, a user accepts to enter a virtual society, in which manifestations of intent are actions in this space exclusively, using one of the functions of the game. Intents declared inside a virtual society are, thus, only valid within it, according to the rules governing the latter, and are devoid of reality or meaning in the real world.

Some of the obvious weaknesses in these arguments are: First, the declaration of intent within a MMORPG environment, contrary to what is implied in the above view, is not directed to another player's character. The final addressee is a real person controlling the character, who is a party of a terms of service agreement with a game developer/operator. Second, although it is true that the text window is an in-game device created by the developer, the nature of the tool of communication does not diminish the validity of intent expressed through it. Third, for a virtual society to be one that is governed by its own internal rules, intents expressed within it cannot be entirely bereft of reality or substance. Finally, it is not altogether clear what is

³⁰ Advertising game items for RMT would be a typical real-world topic.

³¹ I once had a long in-game chat (over 15 minutes) with a female MMORPG player who happened to feel like confiding in me her romantic travails and sought advice from me.

meant by the term ‘virtual society,’ on which concept these arrangements seem to heavily rest.³² A distinction more useful, concerning this case, than that between a virtual world and a real one would be that between legal relationship and an amicable non-legal relationship, a concept deriving from civil law theories on declaration of intent, which, besides, can be an explanatory model for the special nature of the tacit ‘contract of absorption’ implied in MMORPG terms of service (the overarching agreement between participants of a game and the game service provider, on the fact that the game must be enjoyed as and only as a game).

Unlike traditional recorded media, like videos, whose users basically had to just sit and watch or listen, MMORPGs are an extremely interactive genre, devolving an active role to users, who interact with other players in real time. This view, based on a radical separation of a virtual realm from the real world can be entirely pertinent, if we were talking about a dialogue in a film or a play (film dialogues are as much devoid of reality for a spectator as they are devoid of any real intent for the actor!). The relationship between MMORPG players is not at all identical to that between an actor and a spectator. More importantly of all, verbal exchanges between MMORPG players have little or nothing to do with dramatic dialogues between actors that are mostly a verbatim rendering of a pre-written scenario. The freedom and ingenuity of gamers, scarcely constrained by the scenaristic elements of the game, is one of the marking features of the MMORPG genre.

When MMORPG players who together formed a guild communicate with each other through the dialogue window, to call for a meeting of member characters, providing a time and venue within the virtual space, to prepare for a quest by trading items with others, to organize themselves under their leader to tackle a monster and to discuss strategies to lead a quest to a successful outcome, intents here declared clearly have a direct relevance to the game play, pertaining to ‘game play according to in-game rules.’³³ Meanwhile, each of these acts of

³² Time spent playing a MMORPG is real time. The fact that gaming requires considerable investments in terms of time is one of the chief reasons that explain the phenomenon whereby in-game MMORPG items acquire real-world economic values. This point will be discussed in greater detail later in this paper.

³³ Forming and organizing a party of 4 to 6 players for a group play takes a great deal of time and effort. In order to be accepted as a member, players, either expressly or tacitly, agree to act in group within the in-game environment, until the group successfully completes a specific quest for which such association is intended. To defeat boss monsters and earn high experience scores and potent items, the participants of a party must closely cooperate with each other. An early dropout by a participant can be fatal for the outcome. This can severely undercut the fighting power of the unit and, sometimes, even jeopardizes the entire quest. While friendly or amicable relationships certainly describe more lasting in-game relationships between MMORPG players, such is less the case concerning relationships between members of a party or a guild, formed to achieve a specific goal like a quest. Cooperation for an in-game objective or co-production of an event generally takes place

declaration involves human manipulation, through mouse clicks and keyboard typing, hence, a 'real' will of human agents. These intents, concerning especially transfer or trade of items, are manifestations of a desire to produce a concrete legal effect, in the form of a transfer of a portion of the right of use over the game service held by a user in the real world.³⁴

Music scores in Mabinogi and buildings, vehicles and other user-created items in Second Life are illustrative examples. These created items, once transferred within the game (let us suppose only transfers that do not involve cash transactions for now), exclusively belong to others, completely depriving their initial users of control or access to them. A declaration of intent to such effect has an undeniable legal significance.

The dualistic approach, recognizing legal intent, denied to in-game transfers of items under the form of gifting or exchange, to those cases involving cash transactions or with intent to defraud is hardly justifiable as well as extremely clumsy. Even if one were to espouse this view, it would be only fair to at least recognize that one-way transfers of items are extensions of real-world gifting or abandonment of ownership, aimed at legal effects external to the in-game realm.

Once one acknowledges the legal validity of intents expressed within an in-game environment, with regard to transfer of rights of use on game items, one quickly realizes that there exists a number of other legally significant types of declaration of intent in MMORPGs. The declaration of an intent to participate in a prize quiz contest to win in-game items,³⁵ commitment to compensate the lender of in-game items for the service rendered with in-game cash, and a promise to award the winner of a race one hosts with in-game items are some of them.

under an arrangement which give rise to 'duties' and 'responsibilities.'

³⁴ Even those who deny any legal value to intents declared in-game grant legal significance to those expressions of intent regarding RMT. One reads, for instance, in Hae-sang Jeong's above-quoted paper (pp. 9); "When a virtual society becomes linked to the real world, either as an instrument or a goal, such virtual society falls into the domain of real-world laws. Although no legal meaning may be attached to intents declared in a game environment, including intentions regarding trading of game items, when such actions touch upon legal values protected in a real-world society, as an instrument or a goal, legal significance can no longer be denied to them. Therefore, when the text window for in-game communication is used as a tool for defamation or libel, offenses under real-world laws, or for fraud or extortion related to game item transfers, or when the transfer of game items assumes the form of an item transfer contract, establishing a binding contractual relationship as practiced in the real world, recourse to law must be given to parties of such actions, concerning both offenses and felonies perpetrated through virtual means and unfulfilled financial obligations over virtual items."

³⁵ Playing Mabinogi, I once won a 'Popo Skirt' by answering a quiz offered by a musician character.

Assembly and association constitute another ambiguous area of in-game declaration of intent. GM (Game Masters) are MMORPG characters played by site administrators. Their principal roles include mediating disputes between players and collecting information on game bugs which they forward to the development team. In Lineage, lords that possess a castle can levy tax (in-game money) on other players within their domains. In games like Tactical Commanders, Goonzu Online and Archlord, characters vested with authority like the President, Minister or Archlord are empowered to take on certain roles belonging to GM and exert a significant influence on other players.

Attainment of such influential positions granting players a status comparable to a GM can be done either through election or appointment, both requiring confidence from peer players. Declarations of intent having to do with the enactment of self-regulatory rules, governing elections within the community and rights and powers of elected members, can hardly be reduced to those relating to other more casual, social interaction such as friendship.³⁶

In sum, declarations of intent by players, even if occurring within an in-game environment, cannot be unilaterally deemed as devoid of legal value. They must be, instead, individually judged depending on whether they are intended as legally binding. One must, in other words, discern whether they are expressions of an intent within a legal relationship or an amicable one. Meanwhile, a MMORPG community being a community woven by interpersonal connections and bonds, where tacit consensus among members plays just as important a role as express rules, declarations of intent occurring within it probably tend to be most often of the order of amicable relationships. However, the quasi-economic organization developed around in-game items, raising questions about the legal meaning of a gamer's right to use an item, and in-game political activities, an exercise of the same freedom of association as in the real world, are likely to affect social arrangements within the virtual space. The initial predominance of amicable relationships may become gradually eroded in favor of more legally-binding ones; in other words, legal relationships. This is more so, if one considers how MMORPG systems continue to add on new and more elaborate features to support these real-world like social arrangements and also how freedom is a defining characteristic of this particular game genre.³⁷

³⁶ On this subject, see Peter S. Jenkins, 'The Virtual World as a Company Town - Freedom of speech in Massively Multiplayer Online Role Playing Games, Journal of Internet Law,' Vol. 8, No. 1, July 2004

³⁷ This evolution is comparable to that of the internet. In the early days of the internet, most information was public domain content, distributed principally by scientists and researchers, and relationships between internauts, chiefly amicable. With the subsequent introduction of e-commerce and growing presence of the private sector, coupled with regulation by the government, the internet is increasingly becoming a domain of legal relationships. For further reading on this topic, see Tim Wu.

Having said that, the fact that an intent declared within an in-game environment indicates an explicit intention to be legally binding should not necessarily mean that such declaration must be treated as its real-world equivalent. Above all, an in-game declaration of intent arises from its proper context, which is the situation proper to the game play. If internal rules, comparable to those implemented by religious organizations, universities and clans for dispute resolution, or UDRP (Uniform Domain-Name Dispute-Resolution Policy) for domain name disputes, exist among MMORPG players, such rules should be given precedence. In these cases, real-world rules should come in only to fill any vacuum left by internal rules, as a complement to the latter.

On the other hand, when an intent expressed within a game, which is furthermore meant to have a binding legal effect, is completely unrelated to the game's proper context,³⁸ real-world rules may be applied, no longer as secondary rules, but as primary ones (for example, making a statement, directed to a player, constituting defamation would be a declaration of legal intent and an offense under criminal law).

To conclude, gifting a game item to a character played by another gamer or exchanging items with one indeed is an act of transfer of right of use. Meanwhile, MMORPG developers/operators indicate that they have tacitly approved these transfer of right to use game items between players by providing system-level support to or enabling this practice.

IV. Derivative Issues

1. Real Money Trading

"Application-Centered Internet Analysis", (1999)

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=157928

³⁸ On [month] 8, [year], NcSoft, the developer and publisher of Lineage, made an announcement through its official website, that the site administrator would delete the names of 'blood pacts' and characters that may be perceived as "threats to national security interest or otherwise seditious." "Our official position is that using IDs like "Democratic People's Republic" or "Kim Il-sung," says an official from Lineage's customer center, undermines the national interest, even if no further harm was intended." The official denied any external pressure. Officials of Nexon and Esoftnet, publishers of MMORPGs of a similar style, said, when asked about their own policies on the issue; "We do not allow user IDs containing obscene or abusive terms and suspend or shut down accounts that are used for unethical or otherwise reprehensible purposes. But, we do not delete a user name, simply because it makes a provocative reference like Kim Il-sung." See *Ingwonharusosik* (Human Rights Daily), Nov. 15, 2000.

RMT (Real Money Trading) refers to the in-game transfer of items acquired through a MMORPG game service to peer players, trading them against cash. RMT is therefore distinct from a simple in-game transfer of items without cash compensation and trading of an item for an equivalent one as well as items purchased using in-game cash.³⁹

2. Stances toward RMT within MMORPG Community

A. MMORPG Developers and Publishers

Most MMORPG developers and publishers⁴⁰ are opposed to RMT⁴¹ and specify provisions banning the practice in their terms of service agreements.⁴² Their grounds for objection are as follows: at a legal level, rights to game items belong to developers, not to players. Hence, developers/publishers have full discretion as to how these items may be used. Developers and publishers, further, argue that RMT has a potentially detrimental effect on the economic balance within the in-game environment and is unfair for those players who do not or cannot participate in these dealings. The third and finale rationale is that RMT hurts the public interest, creating an environment conducive to fraud, hacking and violence, cybercrimes that are especially rampant among the younger segment of the gaming community. The stance of MMORPG operators is in short that a game must be enjoyed as a game and nothing more.⁴³

³⁹ In-game currencies ('adena' or 'aden' in Lineage, and 'gold' in Mabinogi) are a special kind of items that can be used to procure other items (weaponry, ammunitions, clothing and medicines, etc.) through NPCs and be obtained by selling items from one's inventory to other players. In-game currencies, therefore, enable the exchange of items, an important function within a MMORPG. If items are to be defined as articles acquired during game play, with functions enhancing a character's abilities and helping it move up to a higher level, such definition also describes currencies. Currencies are therefore like any other in-game items, even if of a special type. Hence, from a legal point of view, a transfer of in-game cash is essentially a category of action identical to transfers of items. See Hae-sang Jung, 'Legal Controversies Surrounding Online Game Item Trading,' *Legal and Policy Issues Facing the Game Industry: 2004 KITAL Symposium Papers*, June 2004, pp. 147.

⁴⁰ A 2003 survey of MMORPG publishers by KGDI (Korea Game Development & Promotion Institute) found that 18.7% of total respondents felt that RMT should be prohibited and made illegal, whereas 29.7% did not believe that the practice was fundamentally objectionable, but nevertheless supported stronger regulation. 19.8% of MMORPGs publishers surveyed saw benefit in RMT, although they considered some restrictions necessary. Meanwhile, 27.5% voiced the opinion that RMT must not be regulated or restricted. Finally, 2.2% believed that the practice must be given an active legal recognition (requoted from Ian Macinnes et al., "Virtual World Governance: Digital Item Trade & its Consequence in Korea" (pp. 12)).

⁴¹ For further information on the subject, visit <http://www.gamespot.co.kr/microsite/item/appeal.html>, dedicated to a web campaign against RMT.

⁴² In the early days of MMORPGs, terms of service agreements did not include a ban on RMT, as this phenomenon came about only gradually and significantly postdates the market debut of this online game genre.

⁴³ On this note, see Richard Bartle, "Pitfalls of Virtual Property," The Themis Group (April 2004).

B. Players

While it is true that many MMORPG players relate to game items they acquire through hunting or quests as personal possessions, comparable to personal property in the real world, the vast majority of them, nevertheless, do not engage in RMT.⁴⁴ Opinions are split regarding this practice, even within the gamer community.⁴⁵ Those gamers, opposed to RMT, base their arguments on reasoning similar to that of MMORPG operators. They are more particularly sensitive to the fairness issue, arising from the fact that, for instance, some players can pay their access to levels or items which sometimes take several months to reach or acquire. Meanwhile, those other players supporting RMT do so for varying reasons. Some view cash as a way of having a player's hard work and achievements recognized. Others feel that MMORPG can be exceedingly repetitious without RMT, which actually adds to the quality and excitement of the game. For quite a number of players, RMT is a means of recouping their investment in a MMORPG, both in terms of time and efforts spent in developing a character and acquiring items, and money spent to access the game service. There are even some players, although an extreme minority, who are interested in professionally practicing RMT, as a way of enriching themselves.⁴⁶

C. Stances of Administrative and Judiciary Authorities

○ Fair Trade Commission --> MMORPG Terms of Service

⁴⁴ According to the same study, mentioned in Note 40 above, 246 of 1,247 MMORPG players surveyed, corresponding to roughly 20% of total respondents, engaged in RMT at least once over the immediately preceding one month period. To the question when they trade game items for cash, 549 answered that they never traded, 195 said that they do cash trading to get hold of special items they desire. 130 answered "when they decide to no longer play a game," 118 "when certain combinations of items are needed, 104 "when they first start to play a MMORPG," 85 "when they switch the server," and 66 "to make money."

⁴⁵ The same survey asked its respondents whether they approve MMORPG developers/publishers' ban on RMT per terms of service. 690 of them answered that in-game items, being the fruit of players' endeavors, must be freely sold or bought without any restrictions. 227 were not overly concerned by the ban imposed by developers and publishers, as this does not have the force of law. 187 thought that players must comply with the terms of service and not engage in RMT. Meanwhile, 98 felt that banning RMT would kill the fun of MMORPGs. Finally, 45 answered that in-game items are owned by MMORPG developers and publishers, and that they, therefore, should not be traded offline by players. When asked whether they can think of selling their avatars, 792 answered "No," 293 felt unsure, and 162 answered "Yes," suggesting that MMORPG players were much less willing to sell avatars than items.

⁴⁶ There have been recent reports of a controversial practice known as 'gold farming.' 'MMORPG sweatshops,' mostly China-based operations, hire ethnic Koreans or Chinese to farm virtual goods for sale in richer countries.

The Fair Trade Commission, in an October 19, 2000 order issued by its Consumer and Business Contracts Review Committee requiring MMORPG operators to modify sections of their terms of service, held that operators did not break the law in including clauses banning RMT in their terms of service. The relevant passage of the order reads as follows.

“Prohibiting trading of IDs (characters) and game items for cash is at the discretion of MMORPG developers and operators, just as it is in their right to stipulate terms and conditions on using game products or services as they see fit. Clauses banning such practices, therefore, cannot be viewed as restricting the basic rights of users. Terms of service are not a contract transferring copyrights on items and characters to users, but merely permitting customers to use the latter in the context of the online game service provided. All game data, including items and characters, are part of the game service that operators provide their users. Fees paid by users, furthermore, regard the overall service, and not individual items they acquire. Finally, these provisions are valid also insofar as they are intended to mitigate the negative effects of RMT to society.⁴⁷”

o MMORPG Operators ---> Game Item Auction Websites

In December 26, 2002, the District Court for Western Seoul, denied the petition by MMORPG developer Webzen for a preliminary injunction to stop the operation of ItemBay and other game item auction sites, citing the following reasons:

“Petitioner contends that the rights of users of online game Mu, concerning user accounts, characters and game items, are limited to their use online, as per the terms of service stipulated by Petitioner who retains the intellectual property rights to the latter, and are part of the right to use the overall game service granted by said terms of service agreement, subject to any reasonable restrictions imposed by Petitioner. Petitioner further argues that Respondents brokered the transfer of in-game items, in violation of the terms of service stipulated by Petitioner, and that this action by Respondents disrupted the order and stability within the Mu game environment, undermining the principle of fairness, and sabotaged the operation of the Petitioner firm by causing the victims of said action to file complaints in unprecedented numbers and forcing the latter to step up its monitoring of real money trading. Citing how detrimental Respondent’s action has been on the Petitioner firm’s reputation and the enjoyment of Mu for its users and how it ultimately hurt the latter’s profits, Petitioner demanded that Respondents be ordered to suspend their auctioning activities. However, this court deems that

⁴⁷ More recently, the Fair Trade Commission has been reported to be conducting a new review of terms of service contracts in use among MMORPG publishers.

Petitioner's right, per terms of service, to limit or restrict users' rights, cannot be extended to Respondents who are not parties to said terms of service. This court further finds that Petitioner failed to provide sufficient evidence proving Petitioner's right to receive injunctive relief and the need for such injunctive relief."

o Korea Internet Safety Commission ---> Game Item Auction Websites

On April 15, 2003, the Korea Internet Safety Commission declared information provided in ItemBay 'content harmful to youth,' on the basis of its potentially negative effect on the mental and moral development of children and young adults. The decision was officially announced on May 1, 2003, through National Youth Commission Notice 2003-27. ItemBay responded to the decision, filing a protest with the Seoul Administrative Court (Case No. 2003-*guhap*-18989). On January 15, 2004, the panel of judges voided the decision of the Korea Internet Safety Commission, on the basis of procedural default, saying that it neither pre-notified Plaintiff of its decision nor gave the latter an opportunity to respond, and that said decision does not constitute an exceptional case in which the circumstances or nature of the business may justify the omission of the above procedural requirements, namely pre-notification and offering an opportunity to respond to the interested party. The case is currently pending appeals.

o Korea Internet Safety Commission ---> MMORPG Operators

On May 20, 2004, the Korea Internet Safety Commission declared Lineage 2, a MMORPG serviced by NcSoft, 'content harmful to youth,' citing Article 53, Paragraph 2 of the Telecommunications Business Act, Articles 7, 8 and 10 of the Framework Act on Juveniles and Article 7 of the Enforcement Decree to the same Act. The online game, stated the Korea Internet Safety Commission, promotes violence and speculative mindset and instills aggressiveness & lasciviousness in youth. A protest was filed by NcSoft with the Seoul Administrative Court, demanding the rescindment of the decision (Case No. 2004-*guhap*-15840). NcSoft's motion was denied by the Seoul Administrative Court on October 21, 2004. The case is now on appeal with the Seoul High Court. The Seoul Administrative made the following statements regarding RMT in its denial of the motion:

“(B) Speculative Nature of MMORPGs

(1) As has been discussed earlier, this game is a MMORPG, a game charging fees per use at a metered rate. Hence, game site operators' revenues are directly linked to how many hours gamers spend online. The game, as a matter of fact, has a variety of built-in devices intended to extend hours spent by players online. One of the most obvious artifices of this kind is the system-designed high reliance on in-game items (PK, for instance, serves no real, at least no

indispensable, functions for the game. Its existence, however, makes the possession of certain in-game items crucial. In-game weapons owned by a player decisively affects his or her odds for coming away unscathed from a PK attempt.). The excessive importance of game items becomes problematic, when these items can be privately traded. When how a gamer fares within the game environment is so heavily dependent on a certain number of items, it is unsurprising that they feel tempted to acquire them through any available means, including paying for them with real money. As a result, items of the game in question have become redeemable for sizeable amounts of cash. Quite a few users play this game, precisely with the cash value of in-game items in mind, making the game environment highly speculative. As cash prices for in-game items go up, game service users will have even further incentive to stay online, for extended periods of time, in the hope of laying their hand on these virtual treasures promising so attractive an award.

(2) Hence, this court finds that the game in question exhibits the antisocial and unethical characteristics described in Item 4 of Paragraph 1 under Article 10 of the Juvenile Protection Act, and the ‘unambiguous potential’ for harmfully affecting the physical and mental health of youth, mentioned in Item 5 of the same paragraph of the same article.”

o MMORPG Players ---> MMORPG Operators

The first precedent in related cases is provided by a 2002 damage suit filed in the Seoul District Court (Case No. 2002-*gaso*-125182; in the final judgment on October 16, 2002, the court ruled against the plaintiff). The plaintiff, in his petition, stated that his MMORPG character was permanently removed on the grounds of him having posted a message about item trading on the bulletin board of the game site, which was subsequently deleted by the site administrator. Now denied access to personal content acquired over the three years of playing this game, the plaintiff sought against the MMORPG operator compensation for monetary losses, corresponding to fees paid to the site and game arcades, investment in time and mental anguish from being prevented from exercising his right to pursue happiness. The case was ruled in favor of the defendant. The court’s reasons for so ruling, however, are not known, missing both in the transcript of the ruling by the district court and that of the judgment by the small claims court before which the case was initially brought.

More recently, in July of 2004, 120 players of Lineage I and II (largely made up of members of Anti-Lineage Café) filed a lawsuit against NcSoft, seeking a declaratory judgment of invalidity of the terms of service used by the company and monetary compensation (Case No. 2004-*gahap*-56085). This case, still in judgment (The petition for a judgment of invalidity of the agreement was subsequently withdrawn. Meanwhile, the points of contention concerning the

compensation claim are (1) frequent server downtimes, game errors and instability of service; (2) slow processing of customer complaints; (3) failure to respect the privacy of players; (4) causing anguish and inconvenience through random suspension of user accounts and other restrictive measures; and (5) practices obviously intended to incite addiction and RMT), is being heard by a full bench. The court is, hence, required to provide reasons for judgment. The judgment in this major class action lawsuit promises to become a historic milestone in dividing rights and responsibility between MMORPG operators and users, as the world's first precedent of its kind.

3. RMT of items Does Not Exist

A. Legal Construction of RMT—Traditional Views

(1) Contract of Sale Theory

[Game Items as Objects of Transaction and Monetary Reward as Sales Proceeds]

Most discussions of RMT, both in South Korea and elsewhere in the world, rest on the basic assumption that objects of these offline transactions between MMORPG players are in-game items.⁴⁸ The validity of this premise has been seldom, if ever, questioned, a fact that may be in part explained by the impression forged by popularly-used expressions like “trading in-game items for real money” or “sales of in-game items.”

This perception again stems from the confusion or equation of in-game items with real-world property or goods we discussed earlier in this paper (even the so-called theory of virtual property⁴⁹ is hardly immune from the same conceptual muddle, although starting out from different postulates). We have sufficiently established in the preceding sections of this article, reasons why real-world property laws may not be applied to in-game items. Contrary to the assumption underlying this view, what carries economic value in RMT may not be game items themselves, but the players behind them. If such is the case, unlike with databases, personal

⁴⁸ One reads, in the transcript of a judgment by the Seoul Administrative Court, which we will examine in greater detail, later in this paper, the following passage:

“Items are exchanged for real money through item auction sites and, at times, acquired through theft by hacking into game servers.”

⁴⁹ For further reading on this subject, see F. Gregory Lastowka & Dan Hunter, ‘The Laws of the Virtual Worlds’ (2003).

data and domain names, recognizing propertyhood to game items appears neither necessary nor justified.⁵⁰

(2) Theory of Transfer of Right-of-Use

[Rights to Use Game Items as Objects of Transaction and Monetary Reward as Compensation for Transfer of Rights]

A number of legal scholars have advanced the view that, contrary to widely-accepted beliefs, objects of item trading are rights-of-use, and not in-game items.⁵¹

In other words, what takes place, when two players enter into an agreement to trade items or buy and sell them for in-game cash, is the transfer of a portion of their right to use the game program. In that, the transaction is similar to the transfer of unregistered bonds. The transaction is completed, when the parties, after entering into the contractual arrangement, fulfill their obligations, by delivering items and remitting in-game cash, giving the other the promised right to use the items and cash.⁵²

Concerning the legality of terms of service clauses prohibiting RMT, opinions among those who subscribe to this view are divided:

Some maintain that clauses banning RMT are valid, insofar as MMORPG developers and publishers, as the rightful owners of copyrights to in-game items, are free to determine the terms and conditions for using these items, and also because there are reasonable grounds to prohibit this practice, given its potential to alter the original characteristics of a MMORPG which is

⁵⁰ Evoking on the *Kremen v. NSI* precedent of 2002 that found that domain names, based on their specificity, possibility of exclusive control and cash convertibility, were properties, Ian McKinnis argued that the same status of property should be recognized to in-game items. However, such equation between domain names and in-game items, without considering their differences in legal and economic characteristics, remains doubtfully convincing.

⁵¹ See Hae-sang Jeong, 'A Legal Analysis of MMORPG Actions', pp. 9.

⁵² Trading in-game items offline for cash, as such, does not constitute a violation of copyrights of MMORPG developers or publishers, as this action does not involve copying and transferring of item codes or graphics toward an external destination. To begin with, the transfer of items between in-game characters would not be possible at all, if the game was not programmed to enable it. A developer/ publisher has no ground to allege a copyright violation, since no copyright law is broken. In sum, copyright laws have no direct relationship to RMT. For further discussion on this topic, see Molly Stephens, "Sales of In-Game Assets: An Illustration of The Continuing Failure of Intellectual Property Law to Protect Digital-Content Creators," <http://www.mollystephens.com/Note.htm> (site last visited by the author on Nov. 10, 2004).

foremost and above all a game, and the likelihood that the phenomenon will spawn other problems in the gaming community.⁵³

Meanwhile, others find these clauses invalid on several counts. First, users' rights to game items are not virtual, in that they are rights of use with regard to the intellectual property rights held by game companies. Financial profits deriving from these rights, therefore, are entitled to legal protection. Second, item trading is not a derivative practice, but a built-in function of a MMORPG, insofar as games provide trade windows and allow players to trade in-game items. Hence, by stipulating these provisions against RMT, prohibiting the use of a selective portion of this same function, MMORPG operators violate the principle of estoppel. Further, by interfering with RMT, private actions by users, performed outside the context of program use, MMORPG operators are infringing on the privacy of users.^{54 55}

The theory of right-of-use, as a framework for understanding RMT, fails to adequately explain some of the most essential and baffling aspects of this phenomenon and is unable to provide acceptable answers to known conundrums associated with it. Looming questions are why and how the RMT came to exist where individual game items are traded at different prices, whereas

⁵³ This has been my own view as well as Gang-jin Paek's. See his "Responsibilities of MMORPG Developers and Publishers," a paper presented at the Nov. 13, 2004 workshop hosted by the Seoul National University Center for Law and Technology, titled 'Legal Issues Surrounding MMORPGs': "The relationship established between a publisher of a MMORPG and its users is a special kind of contractual relationship over the use of a software program (end-user license), protected under copyrights law, that is subject to restrictions and conditions. As for in-game items, they are simple modules belonging to a software program. The acquisition of an in-game item during play is equivalent to that of the license to use a module corresponding to this item. Accordingly, if the license conferring the right to use a MMORPG program expressly prohibits trading of in-game items for cash, respecting such a ban is a legally binding obligation for its users. For this reason, it is in the right of a MMORPG publisher to revoke or terminate the license on the basis of a breach of such condition. Developers retain copyrights to all modules, including in-game items, of a MMORPG program, as well as audio-visual works achieved through such modules. Their contracts with end-users imparts the latter only the right, subject to specific terms and conditions, to access and use these modules and works."

Meanwhile, elsewhere in his paper, Gang-jin Paek explores the possibility of recognizing a right similar to performance rights under copyright law, to MMORPG players. My own 'theory of 'gwonri-geum', discussed later in this paper, is precisely concerned with the act of game play and rights arising from it, considering them from the perspective of contract law.

⁵⁴ See Hae-sang Jeong, *Toward a Legal Understanding of Online Game Item Trading*, pp. 171-172.

⁵⁵ Article 6, Paragraph 1 of the Regulation of Standardized Contracts Act stipulates that any contract clauses that fail to abide by the principle of good faith and are unfair or unconscionable to consumers are void. Paragraph 2 of the same Article further states that the clauses of a contract that are excessively restrictive to the basic rights of consumers to such an extent that the goals of said contract cannot be achieved will be construed as unfair.

game site operators only charge a monthly service fee and no per item fees, and why and how the aggregated value of RMT came to exceed the sum of service revenues generated by MMORPG operators. Furthermore, if legal protection is to be extended to financial profits players realize by trading items at market prices, what should be the legal considerations for the responsibilities of MMORPG operators concerning such trading, including having to modify relative importance of items or storing and managing the now cash-redeemable data in their servers. Also, how can we, in the eventuality of a MMORPG operator's discontinuance of a game service, tackle compensation issues arising from it?⁵⁶ Currently, the scope of liability MMORPG operators assume per their terms of service, in the event of a loss of in-game items or other nonfulfillments of service terms, are rather limited. They would either issue compensation in the form of refund of a portion of the monthly fee prorated by hours, or partially retribute the items.⁵⁷

Pricing is the area in which weaknesses of the theory of right-of-use as an explanatory tool for RMT are made most obvious. Under the pricing structure currently in use by MMORPG operators, users pay monthly flat fees, ranging from 20,000 to 30,000 won. If what is traded through the RMT market indeed is rights of use, these rights of use are valued at prices ten times, or even a hundred times, more than these fees. Then, why shouldn't MMORPG operators sell these items individually? It would be an exceedingly lucrative source of revenue. They could introduce a differentiated pricing scheme according to the in-game level or other criteria of valuation. However, no MMORPG operator has thus far ventured into this direction. Even among those operators charging a fee for a certain, limited number of items and in-game item retailers, related revenues remain a fraction of the average game service fee income. MMORPG operators are certainly not in the business of charity, sacrificing profits that are there to be taken. Nor is it that they misassessed the values of rights-of-use on game items they developed, and players outsmarted them by trading them at correct values. The most sensible explanation would be that values assigned to in-game items in the RMT market are something beyond the values of rights-of-use, which are created by users and between users.

⁵⁶ Several MMORPGs, including *Stone Age* and *Shining Lore*, were unexpectedly discontinued in South Korea, provoking an uproar among players.

⁵⁷ Under the theory of 'gwonri-geum', which I will be discussing later in this paper, one can divide the economic value associated with in-game items into two distinct types: a value directly tied to the right-of-use over an item and the 'gwonri-geum'. In this case, any financial profits deriving from the right-of-use (proceeds generated from the transfer of right-of-use) should not exceed the monthly fee paid to the game service provider - or the fee paid for the use of a game item, for those cases where items are accessed for a fee, whereas game service is provided free of charge. Any value in excess of such a fee is considered as pertaining to 'gwonri-geum'.

Unlike in South Korea where most legal proceedings on record, in cases involving MMORPG items, are criminal proceedings, in China, the chief export destination of Korean MMORPGs, there have been civil court precedents. A player of MMORPG Red Moon Rising who lost items in his inventory following a hacking incident brought a damage suit against the Chinese operator of this game. In the judgment issued in December of last year, the court ordered the defendant to reconstitute the stolen items on the basis that cyber items, even if not physical realities, qualify as intangible property existing within a game environment, and that these items possess a value, since players pay for the access to the game program and items, and are, therefore, entitled to legal consideration and relief.⁵⁸

In sum, the objects of RMT, in other words, financial benefits derived from in-game items, first recognized in fraud proceedings,⁵⁹ are neither items themselves nor the rights-of-use associated with them (except in the case where one considers game items or rights-of-use as instruments similar to bonds and recognizes financial benefits of a similar kind, and extends compensation as per terms of service), and appear to be something entirely distinct.^{60 61}

⁵⁸See the Dec. 12, 2003 Sina.com game news article,
<http://china.sina.com.tw/games/newgames/2003/12/121910332.shtml>.

⁵⁹ Feb. 16, 2004 ruling by the Seoul District Court in judgment No. 2003-*godan*-10839 (see also the rulings by the District Court of Southern Seoul, judgment No. 2003-*godan*-1784 (merged), District Court of Eastern Seoul, judgment No. 2002-*godan*-5238 (merged) and the Suncheon Branch of the Gwangju District Court, judgment No. 2003-*godan*-337 (merged):

“Defendant obtained financial benefits amounting to KRW 1,195,000 in total value by defrauding players of MMORPG Lineage, over five different occasions, as detailed in the attached crimes list, to make them pass in-game currency (adens) and items, to Defendant. In one case where Defendant fraudulently appropriated game cash amounting to 50 million adens and a knight armor and weaponry from a victim he misled the latter to believe that a payment had been sent...”

⁶⁰ Currently, in South Korea, offenses involving unauthorized in-game transfers of items by MMORPG players by logging in as another user and moving items from the victim’s inventory to their own inventory or that of a third party, are treated either as crimes against information systems and computer data pursuant to Item 6 of Article 6 of the Act on Promotion of Information and Communications Network Utilization and Information Protection and Article 49 of the same Act (Misuse of Personal Data and Confidential Information) or as ‘fraud through computer manipulation’. This inconsistency in the judiciary’s treatment of in-game item-related cases appears to precisely stem from the lack of a clear distinction between game items, rights-of-use and ‘gwonri-geum’ associated with them.

- One of the several precedents where a defendant involved in an unauthorized item transfer was charged with violation of the Act on Promotion of Information and Communications Network Utilization and Information Protection and judged guilty as charged is the June 3, 2003 ruling by the Seoul District Court (judgment No. 2003-*godan*-3578):

“Notwithstanding the fact that no individuals should tamper with, or alter, any information processed and stored by others over an information and communications network, Defendant, around 09:00 on the aforementioned date, using a computer at an unidentified game arcade, located in Hwagok-dong of Gangseo-gu, Seoul, accessed the Lineage site and entered the user ID and password of a certain Kim (ID: jfk2914, password: ‘rla whd co’) obtained

Now, concerning the validity of terms of service clauses banning RMT, let us take a closer look at the argument against it, under the context of the theory of right-of-use, based on the principle of estoppel. This view is essentially in the same vein as my theory of 'gwonri-geum', which I am going to discuss in the later section of this paper. Although a potentially interesting point of view, especially from a policy perspective, the argument that these provisions violate the principle of estoppel, under the assumption that objects traded in RMT are rights-of-use, is nevertheless fraught with problems. For example, the GPL (General Public Licenses) in use by Free Use (<http://freeuse.or.kr>) or by the open source movement stipulates that copyrighted materials and computer programs may be used free of charge or re-distributed, provided that the purposes of use or distribution are non-commercial purposes. Can a person, who, having gained access to a computer program under a GPL or free use license, passed on a copy of this program against a payment, defend himself, when his action came to the attention of the copyright holder, saying that requiring the use or distribution of the program to be non-commercial constitutes a violation of license estoppel? The private autonomy of a lender, exercised by setting conditions for using property to which he or she retains the rights, is just as

via unauthorized means. Defendant then moved from the latter's inventory, in-game currency amounting to 4,500,000 adens and a pair of 'death gloves,' together valued at an estimated KRW 1,000,000 to his own account, violating the victim's rights to information privacy."

* In quite a few cases, transcripts of ruling do not specify the value of game items moved through unauthorized means.

- Meanwhile, the Busan District Court's October 7, 2004 ruling in judgment No. 2004-godan-3425/4613 (merged) provides an instance where similar cases were ruled as 'fraud through computer manipulation':

"Defendant came into the knowledge of the details of the victim's Lineage game accounts, while he was a part-time worker at the game arcade the latter owns. On July 28, 2002, around 14:40, at an unidentified game arcade, located in Jung-dong of Haeundae-gu, Busan, Defendant moved from the victim's Lineage accounts, 'dldydwh100,' 'dldydwh101' and 'dldydwh102' without permission or knowledge of said victim, items worth 400,000 won in total value, including '6 Janggung Bows' and a 'Charm Necklace,' to his own accounts, held under user IDs 'rainbowtou' and 'rainbowtou7,' fraudulently obtaining financial benefits in the same amount..."

⁶¹ The Seoul High Court's May 8, 2001 ruling in judgment No. 2000-no-3478 (robbery, assault, etc.), while acknowledging that the defendant drew financial benefits from the offense judged, omits mentioning whether it deems the crime in question as directed against the game items, or the rights-of-use associated with them, or other derivative rights, as proposed by the author of this paper:

"Lawful evidence adopted by the lower court indicates that Defendant, with Yong-gu Kim, his accomplice and co-defendant in the original suit, assaulted the victim and took Lineage game items including weaponry items from him. These weaponry items and electronic cash, although not real goods or money, are being bought and sold by countless Lineage players, at high prices (the aforesaid Yong-gu Kim sold the 'magic ring,' one of the weaponry items that were forcefully taken from the victim, at the price of KRW 250,000). Hence, this court finds that profits derived by Defendant from aforementioned items constitute 'financial benefits,' hence justifying the charge of robbery..."

much entitled to legal protection as that of the borrower. There is no real reason why the private autonomy of the former should be sacrificed or restricted in favor of the latter's, except in cases where the conditions imposed by the former prove to be unsupported by law.

The argument based on the principle of estoppel, denying the validity of terms of service clauses prohibiting RMT as does the theory of good will I shall explain below, is unable to carry the day, mainly because it fails to consider that the objects of this trade can be something all together independent from MMORPG publishers/operators, and remains locked in the assumption that what is being transferred is rights-of-use. Worse yet, an argument against prohibition of RMT based on the theory of right-of-use is self-defeating, as the legal logic it uses to defend RMT ends up simply making developers' positions appear all the more legitimate.

B. 'gwonri-geum(similar to lease goodwill)' Transfer – A New Take on RMT

[Objects traded are 'play values,' including entitlement to acquire the right to use certain items and to access certain hunting grounds reserved to higher game levels, and the nature of monetary award is 'gwonri-geum' payment.]

RMT is structurally binary, taking place within two different realms: on the one hand, cash is given and received in real world, between a seller and buyer engaged in a legally-valid transaction; on the other, the declaration of intent to transfer an item and actual delivery take place within the in-game environment.

Discussions on RMT have thus far overlooked the significance of the in-game dimension of this transaction, extending legal recognition (under the theory of right-of-use) only to its real-world dimension where cash is paid and received, whether for items themselves or the right to use them. This real-world transaction has been referred to as a sale or transfer of right-of-use for cash.

Earlier in this paper, I already established how there are no rational grounds to deny the legal validity of intents declared within an in-game environment, concerning cases of in-game gifting or exchange of items, just because these transfers do not involve real world cash payments, if such is recognized to RMT, in other words, transfers involving real world cash payments. The fact that RMT transactions are executed, and obligations arising from them are fulfilled within an in-game environment instead of a real-world marketplace, is not an incidental detail devoid

of meaning, but constitutes the principal evidence that the transfer in question is one of the right to use an item.

Hence, a RMT transaction comprises two parallel legal actions. One is the transfer of the right-of-use over a game item between a transferor and a transferee, and the other, the remittance of a 'gwonri-geum' payment as compensation for such transfer (this is precisely where my own view parts with an understanding based on the assumption that objects of RMT are rights-of-use). Keeping in sight this parallel structure is important for clearly understanding the mechanism of RMT.⁶²

These two legal actions are independent acts, completely distinct from each other. The first one concerns a contract for transfer of rights-of-use, whereas the second one is about a contract for transfer of 'gwonri-geum', against a payment that is a monetary compensation paid by the transferee for intangible benefits passed to him or her from the transferor, such as the efforts invested by the latter in order to acquire the right to use a certain game item.

If one compares this to the case of a store lease, a typical situation involving a transfer of 'gwonri-geum', a player transferring an item under a real money transaction would correspond to a lessee, insofar as he or she, as a user, pays a fee to a MMORPG operator to gain access to the game program. A lessee/player, independently of the use of, or income generated from, leased property, demands from the sublessee (another player who pays a monthly fee, corresponding to the rent, to the MMORPG operator) a monetary compensation for the 'gwonri-geum' of his/her business, in other words, efforts and financial investments made to obtain business licenses and permits and remodel and improve the store property, and other benefits

⁶² When one considers the phenomenon of RMT as 'gwonri-geum' transfers, as proposed by the author of this paper, a moderate degree of regulatory intervention, as proposed by Professor Dae-heon Bae in his aforementioned essay, might suffice to ensure the good functioning of the RMT market. See the first of the three proposals set forth in the concluding section of the essay ('Three proposals toward a legal reasoning and legal framework to extend protection to new types of property and rights created from the process of informatization' can provide a working solution, covering most potential legal issues: (1) Let the market mechanism determine property values of digital data and which of them deserve transaction protection, and regulators step in only at the level of problems arising from such valuation and related transactions; (2) Extend a special legal protection to digital data, based on a legal reasoning similar to the logic underlying intellectual property laws; and (3) Introduce amendments to the current Civil Act to broaden the definition of goods to include digital data). In this case, the economic value of each object of transaction would be created and determined, based on freedom of contract. Benefits transferred in these transactions, while clearly having to do with rights-of-use, need not be separately designated or defined. Principal consideration should be given, instead, to the contract formed between the parties and status of fulfillment of obligations arising from it.

such as locational advantages.⁶³ In what follows, we will attempt to develop a further understanding of the phenomenon of RMT, using the concept of ‘gwonri-geum’, and examine other ramifications and logical extensions of the ‘gwonri-geum’ transaction theory.

4. RMT of ‘gwonri-geum’ Does Exist

A. ‘gwonri-geum (lease goodwill)’

‘gwonri-geum’ is the value of a business over and above the combined value of tangible assets. In the case of a lease of a commercial property, ‘gwonri-geum’ can be a sum of compensation for the transfer of leasehold title and acceptance to renounce leasehold interest and the value of permits and other benefits transferred to the subsequent lessee, including benefits associated with locational advantages, and the value attributable to the expectation of continued customer patronage, including the network of customers and business reputation, as well as that of furniture, fixtures and equipment added by a lessee. ‘gwonri-geum’ is, therefore, assessed and paid for, separately from the security deposit and monthly rent received and paid between a lessor and lessee or a sublessor and sublessee, or between a transferer of a lease title and a transferee, and may be in cash or in kind.⁶⁴

In South Korea, valuation and transaction of ‘gwonri-geum’ are practiced for nearly all urban commercial properties, big and small.⁶⁵ Leases of offices or stores are almost always accompanied by a payment of ‘gwonri-geum’, corresponding to the value of an advantageous location or the compensation for the transfer of rights to use the property. In the case of transfer of leasehold titles, ‘gwonri-geum’ can at times amount to impressive sums, especially when a business renting large buildings like department stores or bars sublets a portion of the property, ten or hundred times the rent owed for the overall building. The subleased property can be further subleased, generating additional ‘gwonri-geum’, paid this time to the first sublessee by his or her own sublessee.

⁶³ However, unlike in the lease of a commercial property where the ‘gwonri-geum’ payment occurs over and above a security deposit, most often in quite a hefty sum, similar contracts for in-game items involve only a payment of ‘gwonri-geum’, as the parties of these contract have already paid the rent (fees for the game service). This aspect of the transfer of ‘gwonri-geum’ in the context of RMT explains why and how it is frequently mistaken for one of a leased property (item) or lease title (right to use the item).

⁶⁴ Yeong-jin Eom, “Toward a Legal Understanding of ‘gwonri-geum’ in Commercial Property Lease,” *Modern Legal Theories*, Gosiyeongusa

⁶⁵ The English term ‘foregift’ appears to have a meaning similar to ‘gwonri-geum’ payments. However, my internet search found no occurrence of this term in papers on relevant topics, suggesting that the term is no longer current.

Landlords generally do not object to a lessee, who receives a ‘gwonri-geum’ payment from a succeeding lessee for surrendering the lease title. Property owners limit their liabilities, usually by including a disclaimer provision in the lease agreement, stating that the new tenant shall not seek the reimbursement of the ‘gwonri-geum’ payment from the lessor and that he or she should further remove all elements added to the property at the expiration of the term of lease to restore it to its original condition.

Meanwhile, after the lease title is passed on from the outgoing lessee to the new lessee, and a ‘gwonri-geum’ payment made, the two notify the landlord of the succession of lease, requesting the latter’s approval. The landlord keeps out of any matters related to ‘gwonri-geum’ and is not liable for claims arising therefrom.

This also implies that, when a landlord does not wish to renew the lease and, instead, requests that the property to be vacated, either to occupy it, himself or herself, or to expand or remodel it, the lessee business no longer has the option of selling the ‘gwonri-geum’. A protest will be to no avail, unless a written agreement committing the lessor to assume related liabilities exists.

B. ‘gwonri-geum’ from an Economic Perspective

○ Types of Business Where ‘gwonri-geum’ Is Most Often Formed and Recognized

‘gwonri-geum’ is most often recognized for commercial rental properties intended for businesses like stores and restaurants where business owners deal directly with customers, and generally not for residential properties or properties for sectors like medical service and schools where customers’ choice of providers is dictated by well-established and measurable criteria like credentials and competence. In other words, ‘gwonri-geum’ tends to be generated when the transfer of business ownership causes comparative minimal loss in the value of investments by the previous owner,⁶⁶ and when customers’ choice is affected more by the goods and services purchased than the person selling them.⁶⁷

○ How Does a Business Recover the Cost of Purchasing ‘gwonri-geum’?

One way of doing it is recouping the investment through business operation. When the current value of the profits expected to be realized by a business by the end of the term of

⁶⁶ In-game rules and apparatuses limiting the useful life of an item or restricting the use of an item according to the play level or other criteria like in the ‘Item Ownership System’ used in WoW affect the ‘transferability value’ of virtual assets.

⁶⁷ Kyeong-hwan Kim & Jeong-ho Kim, “The Economics of ‘gwonri-geum’,” Nov. 14, 2000.

the lease exceeds the amount of 'gwonri-geum' paid, this business is considered to be able to recover its investment.

A business can also recover it from another business succeeding to the lease relationship. This method of recovery is only possible when the lessor cooperates by approving the transfer of lease title. Most landlords, however, do not object to such successions, and recovering the 'gwonri-geum' payment this way is widely practiced. Why is it then that property owners tolerate this type of transaction?⁶⁸

o Why Would Property Owners Not Take a Share of this Pie?

Tenants cannot receive legal protection on investments they make in improvements of a leased property and the 'gwonri-geum' they create in the process. Hence, a so-determined lessor can take advantage of this situation to draw profits from the tenant business. First, a lessor can, at the expiration of the term of lease, refuse to renew it (or not agree to a transfer of lease title). The lessor, in other words, can force the lessee to vacate the property without being able to sell the 'gwonri-geum', so that he may take it over without having to pay for it. Second, the lesser can also raise the rent or jack it up so high that no 'gwonri-geum' payments can be made or received. However, this is not the practice among commercial property owners, which suggests that there may be a certain market pressure that prevents them from doing so.

o Maximizing Rental Income and Minimizing Transaction Costs

The rent of a commercial property reflects the net income expected from the business run on the premises. Net income expectancy, in turn, depends on external factors like the location of the property and neighborhood (whether it is a large commercial neighborhood or one that is densely populated), and directly business-related elements such as products or services provided and the number of customers and quality of customer management. A favorable combination of these factors will naturally increase the net income. While gains in net income, deriving from positive external, environmental factors, generally lead to an increase of rent, benefiting the property owner, business owners keep most of the profit gains that are accounted for by business-related factors.

Having said that, the above scenario assumes that a lessor incurs no transaction costs related to finding a lessee. In reality, unlike with one-time transactions like sales, a lessor must find a prospective lessee who is likely to maintain the lease over its term to guarantee a

⁶⁸ See Bong-yong Yun, "'gwonri-geum' Transactions in Commercial Property Lease: An Economic Analysis."

steady inflow of rent. The prospective lessee must also be able to pay a rent at least equal to that paid by the previous tenant. Finding a tenant meeting all these criteria can be costly. Hence, resorting to a type of transaction involving the least costs is in the interests of both the lessee and lessor.

○ Positive Correlation between Rental Income and ‘gwonri-geum’

‘gwonri-geum’ payment precisely contributes to the minimization of transaction costs, insofar as it is an incentive for businesses to perform better.⁶⁹ A business outperforming the previous business that occupied the same commercial property can expect to sell its ‘gwonri-geum’ at a higher price than it paid. Likewise, poor performance will reduce a business’s prospects for recovering its investment in the purchase of ‘gwonri-geum’ from the previous tenant. This naturally incites lessees to make their best efforts to enhance business performance. In the meantime, ‘gwonri-geum’ helps the lessor narrow the search, as candidates with means to pay the ‘gwonri-geum’ demanded by the outgoing tenant are generally also capable of paying a rent in amounts equivalent to the one paid by the latter. Although the rental income a lessor can expect, as I have said earlier, is largely dependent on environmental factors, not directly related to business, these environmental factors cannot produce a concrete effect without a positive combination of direct business factors giving the tenant the means to afford a higher rent.⁷⁰ ‘gwonri-geum’, here again, serves as the incentive for the tenant business to improve its performance, thereby favorably affecting the income prospects of both the lessor and lessee.

Finally, ‘gwonri-geum’ helps business changes to occur at opportune moments. Changes in external environments sometimes make a new type of business more suitable for a given commercial property than the current one, whose outlook is no longer too bright. In such cases, if a tenant business waits to relocate until losses are incurred, it can lose the chance to retrieve the investment it made in terms of ‘gwonri-geum’ payment, in its entire amount. To make sure that it gets back what it paid for ‘gwonri-geum’, the tenant had better cede the lease as soon as there is a reasonable expectation for a downturn in his or her business sector. A timely change of business is also beneficial for the lessor, whose income prospects can only be enhanced if a more promising type of business is run on the property.

⁶⁹ Hence, the absence of a ‘gwonri-geum’ transfer indicates a non-existence of transaction costs. See the above-mentioned paper by Bong-yong Yun.

⁷⁰ Indeed, what good is it to have a fine property in a prized neighborhood, if the business occupying it fails to thrive or fares so poorly as to affect the tenant’s ability to pay rent?

To recapitulate, the custom of buying and selling ‘gwonri-geum’, for an outgoing lessee, is a way to be justly compensated for the efforts invested in the business and, for the succeeding lessee, a way to increase the odds for successful operation by starting out under an advantageous condition, building on the investments of the former. The benefit is equally important for the lessor. ‘gwonri-geum’, by encouraging lessees to give their best to enhancing business performance, ultimately contributes to increasing rental income for the lessor. All these positive effects of the custom seem to explain its continued currency in the market.

C. Legal Treatment of ‘gwonri-geum’

Although ‘gwonri-geum’ has long been bought and sold, customarily, in the commercial property lease market, the phenomenon has thus far received little attention from the legal community. Nor is there an excessive accumulation of court precedents. Below cited texts are excerpts taken from the transcripts of the Supreme Court’s April 10, 2001 ruling (judgment No. 2000-*da*-5950) and a lower court ruling based on the latter precedent, and a decision by the Fair Trade Commission concerning the prohibition of gift and receipt of ‘gwonri-geum’, imposed by a lessor as a condition of a rental agreement.

o Court Precedents

“‘gwonri-geum’ transferred in the context of a lease of a commercial property is not an object covered by a rental contract, and the payments made at such transfers should be regarded as a compensation for ceding tangible assets such as business equipment and fixtures and intangible assets including business contacts, reputation, business know-how and advantages such as a strategic location, or as a price for the use thereof over a certain agreed-upon period. When a ‘gwonri-geum’ payment is made by a lessee to a lessor, such lessor is in no obligation to return the payment received, as long as the transfer of the tangible and nontangible assets occurred in a valid manner or the lessee made the use of them as intended over the agreed-upon period. A lessee, unless an agreement to the contrary exists, may recover an amount equivalent to the ‘gwonri-geum’ payment made to a lessor by transferring the same assets to a third party or letting such party use the assets, in conjunction with a transfer of lease title or a sublease. Hence, a lessor will have the obligation to return the ‘gwonri-geum’ payment, in whole or in part, only in exceptional cases such as when said lessor claims back the assets transferred at the expiration of the term of lease or terminates the agreement allowing the use of these assets before the end of the agreed-upon term due to reasons not chargeable to the lessee.”

“‘gwonri-geum’ is not an object as such covered by a rental contract, and the payments made at such transfers should be regarded as a compensation for ceding tangible assets such as business equipment and fixtures and intangible assets including business contacts, reputation, business know-how and advantages such as a strategic location, or as a price for the use thereof over a certain agreed-upon period (Supreme Court’s April 10, 2001 ruling (Judgment No. 2000-*da*-5950). Such tangible and intangible assets are not in the scope of the Real Estate Brokerage Act and the Enforcement Decree to the same Act. Hence, these laws are not applicable to brokerage fees received and paid with regard to assets of this type. Therefore, agreements between a broker and his/her client on a fee regarding transactions of such assets, that are freely consented to, pertain to the domain of private autonomy. Such agreements are *a priori* valid, unless they are blatantly unfair, clearly departing from usages and established practices, or other invalidating reasons exist.⁷¹

o Decision by Fair Trade Commission⁷²

The Fair Trade Commission ruled invalid a clause prohibiting the transfer of ‘gwonri-geum’ included in a rental agreement, as follows:

“Unlike security deposits, ‘gwonri-geum’ paid as compensation for the transfer of a lease title and other benefits of such kind is not recoverable from a lessor. Hence, the sole means for a lessee to retrieve the investment made toward ‘gwonri-geum’ is transferring it to the next lessee against a payment of an equivalent sum. The aforementioned clause, prohibiting such a transfer of ‘gwonri-geum’, unfairly restricts the lessee’s freedom to enter into contracts with whomever the latter chooses and, therefore, falls into the category of “clauses unfairly restricting customers’ freedom to enter into contracts with a third party” described in Item 3 of Article 11 of the Adhesion Contracts Act⁷³. The panel, therefore, finds this clause invalid.”

D. ‘gwonri-geum’ Economics and the Gray Market

⁷¹ Sep. 19, 2003 ruling by the Daejeon District Court in judgment No. 2003-*na*-2954.

⁷² The Fair Trade Commission’s Mar. 26, 2002 recommendation for corrective action: recommendation No. 2002 - 025, in a case (case No. 0263) on an unfair contract clause in the lease agreement on a store property inside the Chungin Building.

⁷³ The objective of this law lies in regulating unfair one-way contracts, written and circulated by businesses, which precludes consumers right to choose the terms of transaction. To this end, it mandates businesses to issue and explain contracts to consumers, and invalidates clauses that unduly infringe on consumers rights.

The underground economy is a shadowy area outside the official economy, shielded from government oversight and escaping taxes. The size of underground economic activities, unreported and undisclosed, is difficult to assess and is not included in official government statistics. The black market, the illegal segment of the underground economy, serves as the economic haven for criminal activities from drug trafficking to prostitution. The legal segment of the underground economy is referred to as 'gray market.' Transactions in discount bearer bonds, 'gwonri-geum' and other similar ones involving capital gains of a moderate scale are most common economic activities taking place in the gray market.⁷⁴

This clandestine economy is also referred to as the "cash economy," as cash, leaving no paper trail, is the chief mode of payment. Providing a breeding ground for bribery, organized prostitution, all manners of theft and embezzlement, including white-collar crimes, the underground economy poses a serious problem for society. It is further a marketplace for unlawful currency transactions in violation of the Foreign Exchange Act, undeclared or illegal work and other non-taxed economic activities, benefiting from legal loopholes, including extraterritorial rights. One notable characteristic of the underground economy is that wealth generated in it seldom or never spills into the official economy. In South Korea, most wealth generated in the underground economy is believed to be invested in bonds, real estate, artworks and antiques as well as in premiums on apartment unit tenancy titles and 'gwonri-geum' on certain types of business licenses.

According to a 2000 study published by the OECD, the size of the underground economy in South Korea is as much as 38-50% of its GDP. Meanwhile, a 2000 report by the World Bank estimates its size at 38% of South Korea's GDP, substantially larger than the corresponding figures for the US, Japan and Switzerland, that are all in the range of 10%. Pointing out the severity of the problem of the underground economy in South Korea, the same report suggests three strategies to hinder its influence: (1) discontinue the simplified taxation system; (2) expand tax audits; and (3) introduce changes to customary practices among economic actors to achieve greater transaction transparency and especially promote e-commerce and credit card transactions.⁷⁵

⁷⁴ Quoted from the Naver Encyclopedia, an online reference service.

⁷⁵ For further detail, see the latest issues of *Economic Bulletin* published by the KDI Center for Economic Information.

F. Applying ‘gwonri-geum’ to Item Trading⁷⁶

Topics we explored in the immediately preceding sections of this paper, including economic rationales giving rise to the formation of ‘gwonri-geum’, the mode of transaction, legal treatment of ‘gwonri-geum’ and possible policy responses to the gray market, provide us with knowledge necessary to explain the functioning of the ‘item ‘gwonri-geum’ market’ and conceive working solutions to its problems.

The formation of ‘gwonri-geum’ in MMORPG items is principally triggered by the rarity of certain items. Most items proposed for ‘gwonri-geum’ transactions have in common this rarity value (items that are difficult to acquire through game play and that are, furthermore, powerful tools to assist a character to better perform inside the in-game world). They are either rare items or in-game currencies providing means to acquire such rare items.

Just as the lease of a store property grants a lessee the enjoyment of business premises, the rights-of-use over in-game items conferred by the publisher of a MMORPG provides players with the access to the pleasure of gaming. The pleasure derived from a MMORPG is distinct from that from a film, play, TV show or a book, finished content that is passively consumed in a linear fashion. A MMORPG player is both more autonomous and active than a film viewer or a reader of a book and enjoys a significant amount of freedom in the game and retains control over the nature of entertainment to be had.

Most RPGs have play levels and allow gamers to assess their progress, measured against time spent in play. Different play levels give access to different types of content. In a MMORPG, difference in play levels is naturally revealed to participants. This leads to the creation of various friendly associations among players at the same level, as well as introduces a level-based hierarchy in the community of players. Anyone who has been in the army knows how natural the desire to move up in ranking and acquire more power is in us. The same is true for MMORPG players. Moving up to higher levels is often arduous, involving tedious and repetitious steps. As MMORPG players rightfully put it, these steps are close to ‘menial labor,’ quite far from the excitement one would expect from playing a game. Lower-level players also have to contend with bullying by more advanced players possessing rare items. So-called PK, player killing, for instance, allows a player to put a peer player to a temporary

⁷⁶ On this topic, see Jun-seok Huh, “The Economic Effect of the Derivative MMO(RP)G Product Market,” Nov. 2004 and Sang-woo Park, “The Characteristics of Economic Phenomena in MMORPGs,” Nov. 2004.

death.⁷⁷ Lower-level players, more vulnerable than others under this sort of reign of power, will be naturally inclined to seek a quicker way to progress through game levels, more especially so, when the in-game political apparatus protecting underdogs is non-existent or ineffective.

To 'level up' one's character, a player must improve his or her experience scores by hunting monsters or solving a quest. Doing this requires that a player secures a good standing on three different fronts. First, he or she must acquire decent stat values on attributes including vitality, alertness and wisdom. Second, he or she must attain a good proficiency in skills including magic, range attack, counter-attack and defense. The third and not the least crucial requirement is possessing weaponry, armor and other items powerful enough to make a hunt or a quest a viable venture.

Many MMORPGs serviced in South Korea are designed in such a way that success inside the virtual world depends more decisively on inventory items than a player's stat values or skills levels.⁷⁸ This fact is borne out by players, many of whom say low-level characters with powerful items can easily prevail in a PVP against a high-level character equipped only with

⁷⁷ A Gamestudy.org member known under user ID 'eoraker' voiced the opinion, in a contribution "titled 'PvP - My Passion and My Nemesis,' that disheartenment and demoralization felt by victims of PK are not solely attributable to PK itself, after all a derivative function of PvP, and that how victims are made to feel depends more on the way a game manages the emotional responses of its players:

"If one compares PvP in Lineage and that in DAoC, in Lineage, even when a character was killed by another for no apparent reason, the victim has to suffer penalties. In other words, the victim's experience points get knocked off. Getting back at someone who PKed you is harder, the higher the play level. In comparison, in DAoC, there is no penalty for a PK victim. Getting PKed has no consequence whatsoever.

When practically damaging consequences await victims of PK, like in Lineage, this makes them react emotionally to the event. In DAoC, in-game death feels like no more than a point ceded to an opponent in a sports competition. It sure does not make one feel good. But, that feeling is miles away from how one is made to feel by the knowledge that one has to suffer practical consequences, on top of getting killed. In Lineage, the killer can add more oil to the flame by making scornful remarks to the victim. Inflammatory situations of this kind are inconceivable in DAoC where the option of sneering at opponents or verbally assaulting them does not exist.

In sum, in Lineage, there is no device designed to prevent excessively negative emotional responses to the outcome of a PvP. In other words, no arrangements exist to control negative side effects of PvPs. In DAoC, a game more successful in striking a balance between cooperation and competition, there are a number of ways to reduce negative side effects of confrontational inter-player interactions, which are proving to be extremely effective. That is probably one reason why duels between two users are referred to as PK (Player Killing) in Lineage, while in DAoC, encounters of the exact same type are known as PvP (Player vs. Player)."

⁷⁸ Skills matter comparatively more in Mabinogi than in Lineage or Mu, for a character's ability to level up.

ordinary weaponry. Possessing great in-game inventory items is unlike, say, owning a nice house in real life. These items are not simple consumables, but provide means to realize both tangible and nontangible profits (certain items, for example, enable players to access habitats of monsters, rich in desirable booty or increase their odds for defeating a PVP opponent, while certain other items, worn or carried on oneself, can help enhance one's prestige (or notoriety) inside the virtual society; these various benefits make up the 'gwonri-geum' of a given item). This distinction may be likened to that between the building (consumable) in a 'gwonri-geum' transaction regarding a commercial property, and the store (profits). 'gwonri-geum', in this case, is not linked to the building itself, but to the store and the revenue it generates.

The formation of 'gwonri-geum' is significantly easier, when a MMORPG is so designed to allow the transfer of rare items from one player to another without a loss in value (Such is the case with all MMORPGs serviced in South Korea, with the sole exception of Mabinogi where honor and prestige sometimes substitute for material rewards at the end of a successful quest. Inventory items in Mabinogi, furthermore, do not enjoy unlimited service life. Players sometimes incur repair costs on game items, as they are subject to deterioration and depreciation. In WoW, under its 'item ownership system,' certain rare items cannot be sold or bought even within the in-game environment.). Furthermore, 'crafting' supported by the game system, seen in Lineage and Mabinogi, where, under a program feature called 'enchant system,' players can improve the performance of a basic inventory item by placing a magic spell sheet or other such things to add new functionalities, allows players to create value-added. These items acquire surplus value and are bought and sold at higher prices than they would be otherwise. The process is very similar to that through which a lessee increases the value of a commercial property.

Theoretically, any player who pays for a set monthly fee to use a MMORPG service has access to all in-game items without incurring additional cost. Players, however, have to acquire their right to use individual items by fulfilling the conditions for accessing these items (complete a quest or defeat a certain number of monsters, etc.). However, when leveling up requires excessively labor-intensive efforts, and attaining an experience score needed to level up depends, to an inordinate extent, on inventory items, a player is naturally tempted, as has been discussed earlier, to obtain the right to use a desired item through a player who already owns it, rather than working his or her way to it; this, of course, if a game is so conceived as to allow such a transfer without altering the nature or scope of the privilege.⁷⁹ In other words, payment made in a RMT

⁷⁹ On this subject, Sang-woo Park, in his above-mentioned paper, states: "It is only natural that a player at a low level, stuck with a slew of tedious and dreary chores, feels tempted to cheat. Unlike in

transaction is not for the right to use a given item, but for taking over the play time and efforts invested by another player, leading up to the acquisition of such item.⁸⁰

Concerning the manners through which rights-of-use associated with in-game items are traded within an in-game environment, characters meet with each other at an agreed-upon place and open a dialog window. Items are then exchanged through mouseclicks. No other methods of trading items being available, players oftentimes have to take their time away from hunting or quests to station their character in well-frequented places like in-game plazas to advertise their items offered for sale or exchange and wait for buyers or traders with an open chatting window (more recently, however, in games like Arclord and WoW, new interfaces for item trading have been added to make in-game auctions easier and more convenient). Needless to say, this drives up transaction costs associated with transfer of rights-of-use.⁸¹ Players cannot engage in item sales at the same time as working to level up their characters.

For transactions over items like swords and shields, the ‘gwonri-geum’ may be paid for by the right-of-use over in-game cash (ex. adena in Lineage). As a matter of fact, these items are frequently traded against in-game money. We have seen earlier during the discussion on factors giving rise to the formation of ‘gwonri-geum’ in lease transactions, transaction costs are an important variable. In-game trading also entails heavy transaction costs. Dealing in real-world money, in addition to in-game cash, has precisely the effect of minimizing transaction

standalone games, in a MMORPG, players have only limited recourse to cheats. They can, however, achieve similar results using system elements known as in-game items. With right kinds of items, even a character at a low level can reduce costs involved in moving up to the next level. The only problem is that these items are not automatically available, but are acquired as players progress through higher levels. Therefore, their acquisition itself entails considerable costs. However, unlike experience scores, uniquely assigned to a character, items can be easily exchanged between different characters. Hence, it is possible to cut these costs using real-world money.”

⁸⁰ See a similar argument by Ji-yeon Kim, in “An Analysis of In-Game Item Trading” (Apr. 23, 2004), where RMT is viewed as a user initiative to fight back against unfair or ill-designed game rules and a consumer rights initiative
http://www.r3net.org/php/board/table/column/upload/game_item_kim.pdf

:
“The phenomenon of RMT, although it appears to have moved beyond the realm of simple entertainment, came about essentially as a decision by users to take matters into their own hands to make game play more efficient and palatable for themselves. One can see this as users paying out of their own pocket for improvements in the quality of game play.... If the possibility of purchasing items is a new source of pleasure for MMORPG users, the ability to sell items is just as important a gain for them. Being able to sell in-game items they possess, users can quit a MMORPG any time they wish. No longer having to incur what amounts to a switching cost in the form of items accumulated, users are free to move on to another MMORPG. In sum, RMT has expanded consumer choice, significantly reducing the level of loyalty vis-à-vis a game even among high-level users.”

⁸¹ For this reason, many players have an alternative character, exclusively dedicated to item sales, in addition to their main character who hunts and fights.

costs, by optimizing the distribution of resources (accepting real money allows sellers to do business also with players controlling characters at low levels, with only a meager reserve of in-game cash. By so enlarging the pool of potential transferees, a transferor can reduce related transaction costs.).

On the other hand, when a transaction concerns transfer of in-game cash, it is not easy or practical to pay for the ‘gwonri-geum’ with items like swords and shields. In-game cash, an extremely efficient and valuable means of exchange, is much less so as a medium for storing value. This is because in-game cash, unlike productive items like swords and shields, is a consumable. A financial structure like in real world, where money produces money, does not exist in an in-game world.⁸² Accordingly, in-game cash is merely a temporary storage of value, held by a player until he gets the opportunity to buy productive items desired for his or her character. No MMORPG players indeed would hold in-game cash to earn interest on it. This is also one reason why one would never encounter a MMORPG character offering in-game cash for sale. In MMORPGs, transactions are only about selling or buying items, never about cash.

Having said that, players who look for in-game cash as means of exchange do exist, even if not the majority (this is especially the case with newbies who want to speed up their progress through play levels by acquiring powerful inventory items). However, for the reasons presented above, it is quasi-impossible to find sellers of in-game cash in a MMORPG. The bartering economy comes full circle in a MMORPG universe, where economic actors shun cash transactions, entailing far greater costs than exchange in kind (Take the example of a player who wants to sell in-game cash to buy a Japanese sword. The only way this can happen is that he or she comes across another player who wants to trade a Japanese sword against in-game cash. The probability for finding such a trade partner at the right time and right place inside the in-game world is extremely low.). Such demand for in-game cash, therefore, cannot be met through possibilities available within the in-game environment.

Hence, when ‘gwonri-geum’ is created with regard to in-game cash, the only possibility to effect a transaction over it is using real money. This may explain the fact that transactions at

⁸² This is in all likelihood partly due to the rudimentariness of the in-game economic structure in MMORPGs, providing only the simplest types of interface for immediate face-to-face transactions like exchange windows and no support for credit transactions (ex. banks, courts and other institutional devices to enable credit checking and evaluation of creditworthiness to issue and receive credits and guarantee performance of debt obligations; a small number of MMORPGs, however, are known to have implemented a reputation system).

auction sites like ItemBay are chiefly in in-game currencies like adena for Lineage than inventory items like swords and shields.

These, in my opinion, are causes responsible for the birth of the derivative market called “RMT market” or “item ‘gwonri-geum’ market” to be more precise. Interestingly, however, contrary to landlords who tacitly approve or tolerate ‘gwonri-geum’ transactions between outgoing and new lessees over their leased commercial properties, seeing in this practice benefits for themselves, publishers of MMORPGs disallow similar transactions over in-game items. Meanwhile, statistics show a positive correlation between the growth of South Korea’s MMORPG market and that of the RMT market.⁸³ Moreover, not all MMORPG publishers oppose RMT, as we have seen earlier in this paper.

The item ‘gwonri-geum’ market, in fact, holds considerable benefits for MMORPG operators. By giving beginners the means to quickly overcome some of the in-game hurdles and thereby making the game more enjoyable for them, the item ‘gwonri-geum’ market helps MMORPG operators expand their subscription base. It also benefits existing subscribers, providing them with the opportunity to recoup their investment, allowing them to redeem items they obtained through days and months of endeavors for cash, in the form of a ‘gwonri-geum’ payment.⁸⁴

Just as the lessor of a commercial property, taking no part in a ‘gwonri-geum’ transaction arranged and conducted exclusively between an outgoing lessee and his or her successor, is not privy to the amount of money changing hands or even the existence of a payment, it is practically impossible for the publisher of a MMORPG to actively monitor ‘gwonri-geum’ transferred over in-game items between players. Most known cases of ‘gwonri-geum’ transactions that came to the knowledge of MMORPG publishers are reported by players who fell prey to fraud or have other types of complaints such as nonfulfillment of contract obligations by the other party.

⁸³ See the above-mentioned paper by Joon-seok Huh (this study is the first-ever work that demonstrated the positive correlation between the size of the RMT market and MMORPG revenues).

⁸⁴ The phenomenon of RMT has also to do with the fee structures in use in game arcades, the native environment of South Korean MMORPGs, and the pricing model used by game service operators (monthly flat fee). In the US, where package games are rather costly to purchase, most online services are offered for free or at extremely low rates. How the pricing of services affects RMT is an area deserving further investigation.

V. Conclusion

- Unfairness of Terms of Service Clauses Banning RMT

Once one considers RMT transactions as ‘gwonri-geum’ transactions, the ban against RMT imposed by developers and publishers of MMORPGs in their terms of service agreements appears highly problematic from a legal point of view. Such was also the opinion of the Fair Trade Commission, as we discussed in greater detail in an earlier section of this paper. To begin with, money paid and received between MMORPG players is not, strictly-speaking, a payment for an in-game item, a copyrighted material the rights to which are retained by the developer/publisher of the game. Nor is the money being paid for the right to use the same item.⁸⁵ The sum of money exchanged in the process corresponds to the monetarized value of ‘game play,’ required for, and leading up to, the acquisition of an in-game item, in other words, a ‘gwonri-geum’ of a gaming enterprise, changing hands from one player to another. These transactions, for this reason, fall in the domain of private autonomy of players, and MMORPG developers and publishers have no legal standing to interfere with them.

The main apprehension felt by MMORPG developers and publishers regards the sense of disparity RMT might cause, splitting the community of players into those who engage in RMT and those who do not. Given how MMORPG players are, after all, in a relationship of competition for access to the same limited resources, a derivative element like ‘gwonri-geum’ can understandably become the cause of feelings of deprivation in those players who do not benefit from this extra boost in competitiveness (the situation can only be worsened when, under a PK system designed with no concerns about fairness, high-level players can bully low-level ones with impunity⁸⁶).

However, as we have seen earlier, in nearly all MMORPGs, rare items, even worn or carried by low-level characters, unlikely candidates to obtain this boon whose acquisition requires days and weeks of play and substantial experience scores, do retain their full power and functionalities. Indeed, even if these items are not traded for real money, the sense of disparity is there, since they are allowed to freely change hands inside the game, whether swapped

⁸⁵ The argument by the Fair Trade Commission’s panel, in its 2000 decision in a case on the validity of MMORPG terms of service agreements, in favor of publishers is flawed, precisely because it rests on the assumption that the object of RMT transactions is rights-of-use.

⁸⁶ See the above ruling by the Seoul Administrative Court in the *NcSoft vs. Information and Communications Ethics Committee* (judgment No. 2004-*guhap*-15840).

against in-game cash or simply gifted. Besides, the unequal distribution of pleasure appears to be a fundamental aspect of any MMORPG, stemming from its level-based structure. It is this structure that causes certain portions of game activities to be purely menial labor, the price to be paid before accessing more entertaining portions of the game. Item trading, therefore, must be seen as an adjustment effort on the part of players through cooperation between low-level and high-level characters, to reduce the negative consequences of this structural flaw. Hence, game publishers, instead of making RMT into the black sheep of the MMORPG community on the basis of disparity and inequity, must look into structural problems that are in cause for such huge transaction costs, and consider, for instance, soliciting the generosity and benevolence of high-level players possessing sought-for in-game items, as a solution to readjust the economic and political balance inside the virtual world.⁸⁷⁸⁸

Furthermore, MMORPG developers and publishers need to face up to the reality of the situation. The market pressure transforming what initially pertained exclusively to the domain of pleasure and entertainment into an economic activity is real and here to stay. There is no point in turning a blind eye to this and reiterating the position that the games they created are only games, and that their players must seek pleasure out of them and not turn them into money-

⁸⁷ This does mean that all MMORPGs must follow the example of WoW (greater importance assigned to quests than hunting; health is so speedily restored that characters do not need to own a stockpile of medicine; rare items can be worn or carried only by characters at select levels; rare item ownership system; in-game item auction system; 'instance dungeons' to provide players with equal opportunity to kill monsters and gain treasures; no unfavorable consequences in terms of experience scores or inventory items against players killed during a hunt or by PK; stigmatizing players PKing low-level players; reduced opportunities to take part in group quests or become members of a combat team for players with negative reputation). Making certain items permanently belong to one character, in particular, has the effect of restricting opportunities for inter-player interaction. It would be interesting to see how South Korean players respond to WoW, which, taking a diametrically opposite direction to Lineage I & II providing users with a maximum of freedom, sacrifices some of this cherished freedom for the sake of a planned in-game world. One often hears about the generous availability of blank space as what distinguishes Oriental paintings from their Western counterparts. This, in some way, describes also the difference between Lineage series and WoW. WoW leaves significantly less room to maneuver concerning item trading. Just as blank spaces in a painting, asking to be filled by the beholder's imagination, invite interaction and participation, giving leeway to players is essential in order to uphold the dynamic and participatory nature of this game genre.

⁸⁸ One of the important advantages offered by the 'gwonri-geum' custom is that it serves as a natural selection mechanism; by making sure that the candidate the most capable of generating a maximum revenue prevails, it benefits both the tenant business and the landlord (see Bong-yong Yun's above-mentioned paper). Concerning MMORPG items, there is no real reason why the privilege to choose a player the most apt to make the best use of a rare item should be reserved to the publisher of the game. In a virtual world where appropriate in-game political and social devices such as a reputation system exist so as to prevent abuses related to item ownership, one should be able to keep the amount of WoW-style non-transferable items to a minimum and let players decide what to do with most other items. This will promote players' right to personal autonomy and provide stimulus to the in-game economy as well as have a positive effect on the revenues of MMORPG operators.

making opportunities. Rather than blaming RMT for disparity and inequity concerning access to items, MMORPG publishers should get to the heart of the problem, which is a system design imposing no restrictions whatsoever on the transfer of rare items and letting them function in absolutely the same way for any player who comes into possession of them (by so designing the system, they turned 'game play' into yet another tradable reality, like items themselves).⁸⁹

Another major concern voiced by MMORPG developers and publishers has to do with potential liabilities they may face, in the event of item loss or damage, due to a system malfunction or discontinuance of service, should cash value be assigned to in-game items. RMT transactions, however, do not assign values to items themselves, as has been already sufficiently established. Hence, under a legal reasoning equating RMT with 'gwonri-geum' transfers, no protection under property law will be extended to game items. Therefore, MMORPG operators' liabilities arising from their duty to store, manage and balance in-game items would never be in amounts they are traded for in the RMT market, but be limited to their original value. Risking nothing, MMORPG developers and publishers thus have no real need to prohibit transfers of 'gwonri-geum'.⁹⁰ Doing so will be an overkill, serving no practical purpose.

⁸⁹ Certain rare items have the functional characteristics of production means, making them similar to certificates of qualification or licenses. Items of this type should permanently belong to the players who earned them. Publishers of MMORPGs where these items are transferable to any players are blissfully oblivious of this structural unfairness and show little qualm about treating RMT as a threat to the principle of equity. On this subject, see the legend system in *The Kingdom of the Winds* (a legend is an insignia worn by characters, given as a reward at the end of a successful quest instead of a rare item), title system in *Mabinogi* and the item ownership system in *WoW*.

On this note, Jeong-won Han, the head of the Korean branch of Vivendi Universal Games Asia Pacific (currently renamed Blizzard Korea), the distributor of Blizzard's *WoW* in Korea, in a November 11, 2004 interview with Gamemecca.com, had this to say:

"What I would like to stress is that the goal of a game is entertainment and not productivity. This is precisely the common sense that has been lost sight of in South Korea's MMORPG market. We are witnessing a phenomenon quite unheard of in South Korea: too many MMORPGs players came to perceive gaming as money-making opportunities. In *WoW*, we adopt a radical solution against real money trading; we use an item system that makes it impossible for players to transfer their inventory items to others. We feel confident that *WoW* can appeal to the gaming community without RMT and the boost it gives to a MMORPG's market share. There is nothing easier than to design a game to encourage RMT. A buzz created through RMT sure does help a MMORPG to quickly take off. But, at *WoW*, we set our sights on long-term success. The perception of gaming as a money-making activity can only hurt the future of the MMORPG market. We want to go further than just decrying RMT. We intend to prove to the Korean MMORPG market that a game can still succeed based on its merits as a game alone."

* The Korean launch of *WoW* promises to be quite an important turning point in the evolution of the local MMORPG world. The relationship between humans and the environment is a two-way street. We are not just influenced by the environment, but also challenge and modify it. I will follow with interest the next stage of evolution in South Korea's gaming community and how these gamer who, as players of *Lineage*, gave birth to RMT would challenge the new environment presented by *WoW* and transform it.

⁹⁰ See the above-discussed text of verdict by the Beijing Municipality Chaoyang District People's Court.

Meanwhile, the fact that ‘gwonri-geum’ transactions over in-game items are out of the scope and beyond the control of MMORPG developers and publishers does not mean that the latter have no right to regulate any of the related activities. For instance, prohibiting mid-game advertisings of ‘gwonri-geum’s for sale may very well be justified, for disciplinary reasons (on the grounds that these behaviors interfere with the enjoyment of the game for other players through inordinate reminders of external realities, foreign to the virtual world). The following is a provision I propose as an alternative to current terms of service clauses banning RMT.⁹¹

“[name of the MMORPG publisher] expressly disclaims any involvement with monetary transactions conducted between users of [game name] in conjunction with the transfer of in-game items, including and not limited to ‘gwonri-geum’ transactions, and further disclaims all liabilities whatsoever for any direct, indirect, special or consequential loss or damages howsoever resulting directly or indirectly from such transactions. Notwithstanding, [name of the MMORPG publisher] shall consider in-game advertising or announcements related to the offer of cash against in-game items (regardless of the nature of such payment) behaviors disruptive for other players and detrimental to their enjoyment of the game, and reserves the right to impose the restrictions set forth herein in this Terms of Service Agreement, on such actions.”

The social and economic impact of RMT has been yet another major concern that caused MMORPG developers and publishers to maintain their ban on this practice. RMT transactions, initially conducted by a handful of players, have grown in scope, now forming a gigantic gray market (currently, no tax is assessed to earnings from game item transactions) with certain links to criminal or otherwise unlawful activities, like all gray markets.⁹² However, gaming endeavors leading to the acquisition of in-game items valued in ‘gwonri-geum’ traded in RMT are not forbidden or reprehensible objects of transaction. Nor are their transactions illegal. Hence, there is no real legal basis justifying the imposition of restrictions on these transactions

The court’s ruling ordering the MMORPG operator to restitute lost items to the plaintiff, rather than compensate the latter by monetary award in an amount equivalent to the market value of these items, concurs with my opinion that prices in the RMT market do not capture the value of items or rights to use them, but their ‘gwonri-geum’, a derivative value created in the process of transferring the latter.

⁹¹ See also the argument that a VW (Virtual World) requires separate ‘interration statutes’ in addition to a terms of service agreement, discussed in Note 102 below.

⁹² This was the Fair Trade Commission’s second point against RMT in its 2000 review of MMORPG terms of service agreements.

by MMORPG publishers. Furthermore, enforcing such a ban would be too costly. For example, the bond market is a well-known gray market. This fact, however, does not make bond contracts legally void.

In conclusion, clauses banning RMT currently in use in terms of service of most MMORPG publishers are of doubtful legal validity, often resting on erroneous legal reasoning and, more importantly, are unfair insofar as they heavily infringe upon players' rights to the intangible value they have created.

Further, from an economic perspective, RMT is rather beneficial for MMORPG developers and publishers (think of the positive correlation found by studies, between game service revenues and the prices of 'gwonri-geum' on game items, which confirms the popular wisdom among MMORPG players, that says that when RMT takes off, a game takes off). In reality, as has been often pointed out by MMORPG players, many publishers and operators do not care to correct structural issues in their games that are primary causes for an excessive growth of RMT and condone the phenomenon, as it helps increase their revenue. Meanwhile, in a blatant act of hypocrisy, they include a ban on RMT in their terms of service, whose enforceability as well as validity are to say the least questionable, in an attempt to show that they are companies concerned about the welfare of youth. These clauses banning RMT clearly serve the purpose of covering the rear, allowing them, in the event of a problem, to pass all responsibilities on to players and let the police and government authorities sort out the mess.⁹³

⁹³ That banning RMT can have the contrary effect of increasing cybercrime is an idea that deserves serious attention. The probability that victims of a RMT-related fraud or extortion will be able to recover lost money by reporting their cases to the police or the MMORPG company remains slim. A ban on RMT by a MMORPG company will be an additional reason that makes these victims reluctant to report their cases, as doing so will be admitting their participation in RMT, which can potentially lead to the suspension of their user account or other types of penalty. This situation can be exploited by criminals to their advantage. Meanwhile, for a ban on RMT to have an effect of suppressing cybercrime, it must be accompanied by enforcement efforts by a MMORPG company. In other words, participants in RMT should be identified, and disciplinary measures taken against them. However, MMORPG operators, having no right to trace these participants to their user account or match information collected with the personal data of users, are virtually completely deprived of means to enforce the ban. In sum, these terms of service clauses are all but virtual weapons in and of themselves. In fact, they have been serving merely self-defensive purposes for MMORPG operators, shielding them from the accusation of condonement of, and complicity in, RMT (and also turning a deaf ear to the demand to improve in-game economic systems or to regulate item trading, for instance, through a level system). Covering their posterior with a simple clause in the terms of service, MMORPG operators pass all responsibilities to players and 'innocently' defer to the police in the case of trouble (whilst they gladly reap the benefits of RMT, which energizes a game community and lowers the entry barriers for new users). By proposing my theory of item 'gwonri-geum', I hope to remove the stigmata of speculativeness placed on RMT by MMORPG publishers and incite them to cease hiding behind these clauses to disclaim responsibilities over the practice and to finally engage in long-overdue efforts to improve their games.

This fine point has not been missed by the Seoul Administrative Court, when it rejected, in its ruling in the NcSoft vs. Information and Communications Ethics Committee case (filed in protest of the latter's declaration of NcSoft's Lineage II as 'content harmful to youth'), the MMORPG publisher's argument that Lineage II contains no elements harmful to youth and that the company is not responsible for any negative consequences on youth resulting from RMT over related in-game items, as its terms of service agreement bans this practice.⁹⁴

"As has been discussed earlier, this game is a MMORPG, a game charging fees per use at a metered rate. Hence, game site operators' revenues are directly linked to how many hours gamers spend online. The game, as a matter of fact, has a variety of built-in devices intended to extend hours spent by players online. One of the most obvious artifices of this kind is the system-designed high reliance on in-game items (PK, for instance, serves no real, at least no indispensable, functions for the game. Its existence, however, makes the possession of certain in-game items crucial. In-game weapons owned by a player decisively affects his or her odds for coming away unscathed from a PK attempt.). The excessive importance of game items becomes problematic, when these items can be privately traded. When how a gamer fares within the game environment is so heavily dependent on a certain number of items, it is unsurprising that they feel tempted to acquire them through any available means, including paying for them with real money. As a result, items of the game in question have become redeemable for sizeable amounts of cash. Quite a few users play this game, precisely with the cash value of in-game items in mind, making the game environment highly speculative. As cash prices for in-game items go up, game service users will have even further incentive to stay online, for extended periods of time, in the hope of laying their hand on these virtual treasures promising so attractive an award."

What is especially interesting in this ruling is that the judges judiciously noted that high prices of 'gwonri-geum' on in-game items also boost the revenues of MMORPG publishers. The insight emerged in this precedent is in the same vein as my own theory of RMT as 'gwonri-geum' trading, or is not, at least, altogether unrelated to it.

⁹⁴ NcSoft had this to say in its own defense:

"Enabling users to trade game items using 'adens' or 'adenas' was intended to make game play more dynamic. Item trading inside the game is a phenomenon that occurred spontaneously, as a natural consequence of the logic of the game. Meanwhile, as for trading in-game items offline for real money, we have always condemned this practice, which is expressly prohibited in our terms of service. However, the extent to which we can control real money trading is limited. Branding the game as speculative on the basis of real money trading, an offline activity for which we cannot be wholly responsible is unreasonable and excessive."

Meanwhile, concerning the view that RMT is ‘speculative,’ also expressed in this ruling, I differ with this panel of judges and would qualify it, instead, as addictive.⁹⁵ RMT is no more speculative, if at all, than a ‘gwonri-geum’ transaction in a transfer of lease on a commercial property. MMORPGs are not games of chance like online go-stop or poker. The possibility of acquiring in-game MMORPG items does not depend on luck. In-game items are the outcomes of a player’s gaming endeavors. His or her success in acquiring them purely depends on the quantity and quality of such endeavors. Concerning the final remark of the above-quoted text of ruling that reads, “As cash prices for the in-game items go up, game service users will have even further incentive to stay online,” this kind of dynamic may be at work only in a small minority of cases such as MMORPG sweatshops. Just like the size of ‘gwonri-geum’ is not the principal aim of a business, even if an important incentive inciting businesses to better perform, the major preoccupation of MMORPG players is not the value the real-world market assigns to an in-game item. They most often accept to pay high prices in the real-world item market for an item to better succeed in the virtual world, in other words, to realize virtual profits.

After all, the most damaging of all negative effects that may be caused by the ban on RMT is that it erodes the single most important characteristic of MMORPGs, in other words, active contributions by players, by not appreciating them at their just value or undervaluing them (MMORPGs are giving rise to a virtual society, when tangible content provided by their developers and publishers becomes combined with nontangible content generated by players, through the cooperation and interaction between the two parties). This gesture, intended to suppress the negative effects of RMT, is, in fact, also stifling this game genre’s most positive attributes. Faced with criticisms concerning negative social effects of RMT, MMORPG publishers have thus far failed to respond proactively, keeping a passive and defensive stance and refusing to recognize any imperfection in the design of games. No real will to resolve the

⁹⁵ The Busan District Court’s Dec. 3, 2003 ruling in judgment No. 2003-*no*-3344:

“Entertainment apparatuses and devices liable to instill a speculative mindset to their users” mentioned in Article 30, Paragraph 1, Item 4 of the Act on Special Cases Concerning the Regulation and Punishment of Speculative Acts (the same as “Speculative apparatuses and devices” in Item 2 of the same Paragraph of the same Article) refer to those entertainment apparatuses and devices used for games in which the outcome is determined by chance, independently of the skills and abilities of their users, and the outcome further entails financial gains or losses of a scale surpassing that commonly accepted in society. These apparatuses or devices serve not so much entertainment purposes as purposes of realizing financial benefits. Determining whether a particular entertainment apparatus or device falls into this category requires consideration of how such apparatus or device is operated, used, the size of financial gains and losses that may be realized or incurred through its use, size of revenue generated by its operator and whether or not points or prizes earned in the game are redeemed or redeemable for cash.

issue of RMT has been demonstrated on the part of MMORPG publishers. Any attempt to find a solution to the issue must be preceded by a review of related terms of service clauses, which distort the reality of RMT, distract from the core of the problem, and, in fact, are nothing but a hindrance.

Doing away with such clauses alone, in reality, can solve much of the problem. Without the ban, participants in RMT can trade in a more stable environment. This will also make it easier to report to authorities criminal offenders seeking to draw profits through fraudulent means, a welcome development for the cybercrime fighting efforts. As for MMORPG publishers, when the market overheats over their in-game items to such an extent to damage the integrity of the game, cause social problems or make them face the prospect of becoming penalized by the media review committee, they should know better than pulling out the perennially lame excuse “Our terms of service prohibits RMT.” They should introduce appropriate changes to the game system and provide incentives to players to cause changes in their behavior. By encouraging players to take the initiative on regulatory issues of the virtual society, in other words, by enlisting them in their cause, MMORPG publishers can hope for much more concrete changes than by going it alone.

- Need for Regulating the Item ‘gwonri-geum’ Market

One thing that should be made clear is that the idea that MMORPG publishers’ terms of service clauses banning RMT (or real money trading of item ‘gwonri-geum’) are void and that cash transactions over in-game items are legitimate, does not necessarily negate the need for regulating this market. A market constituted by individual transactions that are legally valid can still be dysfunctional at a macroscopic level.⁹⁶

To begin with, the RMT market is a gray market where most of wealth generated is untaxed.

This is a problem that should be tackled at the government level, in the context of the overall policy dealing with gray markets in general.⁹⁷ When one considers the object of RMT as the

⁹⁶ This position is in line with that suggested by Dae-heon Bae in the first of the three proposals for creating a legal framework for new information age-type properties, in his above-mentioned paper; “Let the market mechanism determine property values of digital data and which of them deserve transaction protection, and regulators step in only concerning problems arising from such valuation and related transactions.”

⁹⁷ On March 12, 2004, NcSoft submitted to the Ministry of Culture and Tourism a proposal for

play hours and skills, as does the author of this paper, the question one has to answer is “how can one assess income tax on earnings that are from ‘play’ and not ‘work’?” Meanwhile, the birth and growth of the RMT market have been accompanied by a gradual shift in perception of MMORPG gaming, from play to work (comparable to the work of an athlete or a performer). We have thus arrived to a point where discussing tax obligations of a MMORPG player who realized gains from selling ‘gwonri-geum’s relating to in-game items, an intangible asset, does not sound entirely absurd.⁹⁸⁹⁹

Next on the table is the issue of protecting youth from potentially detrimental effects of the RMT market.

As seen earlier in this paper, the internal design of MMORPGs (possibility to transfer rare items to other players; heavy transaction costs) has been one of the major causes that brought forth item ‘gwonri-geum’s. This has been also a cause for excessive absorption and engrossment and even addiction among players,¹⁰⁰ especially aggravating for youth. It is undesirable for children and adolescents to devote inordinate amounts of their time to a MMORPG, in a period of their life where the priorities should be exposure to a variety of experiences and learning

amendment of certain provisions of the Act on Recorded Music, Video and Game Products, to regulate offline loans, transfers and dispositions with consideration of in-game items. Further on March 23 of the same year, the Information and Communications Ethics Committee of the Ministry of Information and Communication asked for rules to restrict activities by item transaction brokers. While I fully approve an appropriate level of government intervention in the item ‘gwonri-geum’ market, I do not believe in a uniform ban on ‘gwonri-geum’ transactions, a phenomenon brought about by market forces, as a means for optimal resource distribution. Nor do I believe in a downright skepticism as to the legitimacy of regulatory intervention. What we need is a middle road between the two extremes. MMORPG publishers’ freedom of expression, which is to say in this case, freedom of system design, should be no exception. MMORPGs, unlike traditional package RPGs where scenaristic elements play an important role, give considerable amounts of freedom to players. In that, MMORPGs are closer to a functional work (similar to architectural structures like a play park) than to a literary work. The scope of copyright protection extended to functional works is significantly narrower than that accorded to literary works.

⁹⁸ See the Nov. 10, 2004 Gamenews.com article titled ‘National Tax Service Secretly Probes RMT Market.’

⁹⁹ As has been discussed earlier in this paper, South Korean courts recognized in several criminal cases of fraud, extortion and blackmailing and robbery, the stake of offenses judged as financial benefits. The ‘financial benefits’ here, in my opinion, are not items themselves, but the value of ‘play input’ a player was required to make in order to acquire an item, in other words, its ‘gwonri-geum’.

¹⁰⁰ The boundary between absorption and addiction is at best blurry, as unclear as that between socially acceptable entertainment and speculative activities. The fact that MMORPGs are serviced around-the-clock and year-round, and that hours spent online are believed to directly affect the ability to level up certainly increases the absorptive and addictive phenomenon among the players of this game genre. See my own ‘Let’s Introduce Age in the Lineage Society,’ a paper dealing with the immortality of in-game characters and a uniform level system (

http://lowol.net/b8_ae_b4_cf_c1_f8_bb_e7_c8_b8_bf_al_b5_aa_c0_cc_b8_a6_b5_d6_c0_da

).

(over-absorption in a game, even if a good one, is like an unbalanced diet; youths need to be able to devote time to other games or viewing films or reading books). Being overly invested in an online game also leaves children and adolescents more vulnerable to temptations of lucrative criminal activities.¹⁰¹

Discussions on the negative consequences of the youth participation in the item ‘gwonri-geum’ market most often cite internet addiction and cybercrime, in other words, only the external effect of the youth involvement.¹⁰² Under civil law, any contracts entered into by a minor, over a sum of money exceeding the size of the latter’s allowance, can be voided by himself/herself or his/her legal guardian. Hence, the participation by minors in the item ‘gwonri-geum’ market also causes legal instability; an undesirable consequence of an internal order. Finally, item ‘gwonri-geum’ transactions can have potentially negative consequences on the quality of the game itself.

Item ‘gwonri-geum’ trading is, in many ways, a user initiative to transform the in-game environment to a state optimal for players (through redistribution of items), which started out as a protest to excessively high barriers to moving up to higher levels, in the form of unreasonable amounts of drudgery to complete, that some sees as a ploy by MMORPG developers to artificially extend play time in the absence of adequate content. In sum, RMT enables players to modify the content provided by a MMORPG developer and introduce new variables to the game (it is as though the producer delegated to players production rights over a portion of the in-game economy).

Item ‘gwonri-geum’ trading has an effect that is, I believe, double-edged, on the quality of the game. On the negative side, item ‘gwonri-geum’ trading is symbiotic to the drudgery-rich

¹⁰¹ I have been told that in WoW, the fatigue levels of characters will be soon integrated as a factor of game play.

¹⁰² According to the above-mentioned report to the National Assembly (Ministry of Culture and Tourism, on the Korea Game Development and Promotion Institute), there are approximately 130 to 189 game item trading companies, known to the Ministry of Culture and Tourism. The size of market, as of 2004, is estimated at KRW 580 to 800 billion. If one includes under-the-table transactions, the total trade volume is believed to amount to as much as KRW 1 trillion.

Professional item traders operate sweatshops in places like Shenyang and Yenbien in China to collect massive quantities of in-game items of major MMORPGs which they sell to South Korea. Shenyang counts some 100 sweatshops of this kind, including some larger ones hiring 100 to 200 workers. These operations are known to be linked to organized crime rings.

Surprisingly, some of the workers in these sweatshops are believed to be South Korean high school and college students on vacation in China. They reportedly play MMORPGs for over 12 hours a day on average and get paid about KRW 800,000 a month.

game environment, insofar as, instead of forcing MMORPG publishers to correct this problem and improve the content, it exonerates them and condones their inertia. Rather than prompting MMORPG developers to add gaming values of higher orders, such as intellectual and cultural values, by improving game scenarios, quests and party systems, item ‘gwonri-geum’ trading tends to incite them to turn to comparatively cheaper, quick fixes. MMORPG updates, as a matter of fact, are limited to making monsters more fearsome or powerful and hunting grounds more perilous and harder to access, and adding ever-more potent and rare items to assist soloing characters. This tendency is sure to hurt the long-term prospects of MMORPGs by skewing the directions of content quality development.

On the positive side, item ‘gwonri-geum’ trading tightens community ties among players and helps the community come of age. Through these economic activities, players as a group come to exercise their rights to autonomy up to a certain degree.¹⁰³ Whilst defining what a game is is not within the scope of this paper, concerning MMORPGs, we can say that this is a genre far removed from traditional standalone games that are scenario-dominated and rule-bound from beginning to end, leaving only a passive role to players. Virtual societies created by MMORPGs enable interaction not only between players and developer-provided content, but also between players. Item ‘gwonri-geum’ trading is precisely a testimony to this value-added generated in MMORPGs through its uniquely vast scope of interaction.

MMORPG publishers could have had a totally different approach than they have now. They could have released a completely finished product, asking players to simply find whatever pleasures they can from using it. Such is precisely not what they do. They deliver works-in-progress so that players can derive enjoyment from molding them to their desire and in the way they see fit. Which is more fun? A finished world or an unfinished one? What does it mean to have fun in a virtual society created by a community of continuous participating players? What does it mean to live in such a parallel, online society? Answering these questions requires further observation of this unique phenomenon called MMORPG. In my opinion, the current game economy, emulating the failed market economy of the real world, can be made into something far superior, provided an in-game social and political system,¹⁰⁴

¹⁰³ In-game protests and demonstrations may be construed as manifestations of players’ freedom of expression (although the freedom of expression in this context is quite distinct from the same term applying to game publishers). Below is the scene of a protest at the Lineage test server (image omitted).

¹⁰⁴ In South Korean MMORPGs, this role has been traditionally assumed by GMs and other officials from the game company. While players enjoy autonomy over certain areas of the in-game autonomy, MMORPG operators are wholly in charge of handling issues and disputes arising from economic activities. The arrangement is similar to that of a *Nachtwächterstaat* (night-watcher state) in that the intervention by GMs and other forms of authorities in the in-game market economy was kept to a minimum. For further discussion on this topic, see Robert Shapiro, “Fantasy Economics, Why

capable of increasing market efficiency and correcting structural flaws.^{105 106} Such an environment, created through cooperation between players and the developer of the game, would be much more interesting than one in which RMT is outlawed.¹⁰⁷

Economists Are Obsessed with Online Role-Playing Games” (Feb. 4, 2004), <http://slate.msn.com/id/2078053>.

Meanwhile, Jack Balkin of Yale Law School, in his “Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds” (2004), proposes a special set of rules he calls “interration statutes” for VWs (Virtual Worlds), in addition to rules set forth in a terms of service agreement. He discusses three types of freedom of expression in VWs from a perspective of constitutional law: First, players’ freedom of speech in a VW; Second, the freedom of expression of the producers who created the VW programming; Third, freedom ensuring the protection of a VW from the outside world. The interreration statutes are rules to guarantee these three types of freedom of expression, adjusting and mediating their interactions: “These statutes would create a set of templates that allow platform owners to choose what kind of virtual world they wish to create and what corresponding duties they owe to the players. Players, in turn, could choose which virtual worlds they wish to occupy knowing in advance what their free speech rights in those worlds will be. In return for choosing to interrater, governments would shield game owners from liability for communications torts committed by the players.”

¹⁰⁵ In Goonzu where a sheriff system (‘podocheong system’) is in use, they recently started allowing players to perform certain amounts of disciplinary actions, previously reserved to GMs. Meanwhile, in Granado Espada, a new MMORPG to be released by Hak-gyu Kim, developer of Lagnarok, a hit South Korean MMORPG, is said to be a game heavily given into the in-game political system and power hierarchy. It will be interesting to see how the game achieves this and how players would respond to such emphasis on power relationships.

The reputation system in WoW (negative reputation points for players who attack low-level players or non-combatant NPCs (non-player characters) during combats or PvP (when negative reputation scores exceed certain set values, points are deducted from experience scores) can also be considered as a social system assuming some of these functions.

On this subject, see my own ‘Let’s Introduce Age in the Lineage Society

(2002)

http://lowol.net/b8_ae_b4_cf_c1_f8_bb_e7_c8_b8_bf_a1_b5_aa_c0_cc_b8_a6_b5_d6_c0_da

and ‘Scale of Justice in MMORPGs’

(2003)

http://lowol.net/bf_c2_b8_f5_c0_cc_b0_d4_c0_d5_bc_d5_c1_a4_c0_c7_c0_c7_c0_fa_bf_ef_bd_c5_bd_ba_c5_db

d3_bc_d3_c1_a4.

The publisher of Second Life is reportedly trying to decide between an offline copyright system and a sharing system like Creative Commons or GPL, for user-created in-game items and the overall VW economic system.

¹⁰⁶ The Seoul Administrative Court, in the above-mentioned ruling in a case involving Lineage II, found the game’s system for controlling PKs to be ineffectual as an apparatus to guarantee fairness in the in-game environment; “The ‘chaotic character system’ in the game product in question, apparently intended to set limits in PKs, produces the contrary result of further inciting PKs among players, creating a behavior known as ‘chaos making’ to cause item drop.” The screenshot below shows a prison cell in Ultima Online (image omitted).

¹⁰⁷ Providing equal opportunities for all, building social safety nets and protecting those less powerful to eliminate poverty, monopoly of power and wealth and inequity and indifference toward public interest

MMORPG developers and publishers, and game review organizations, taking note of the various points developed in this paper, must take care not to lose sight of the entertainment quality of MMORPGs, in their deliberation on ways to harmonize the contractual rules set forth in terms of service, with the design of political and economic systems inside the virtual world¹⁰⁸, and ways to balance self-regulation and externally-imposed rules for the governance of the MMORPG community. Meanwhile, the government, in its policymaking effort against the negative side effects of item ‘gwonri-geum’ trading, must base its decisions on an accurate understanding of this market as well as of the cultural background to the novel phenomenon that it is.

This paper concludes with a quote from Michael Hein, the great philosopher of virtual reality, and one from Yochai Benkler, the guru of cyberlaw:

A virtual world must not be overly similar to the real world. If it is no different from the real world, this might put a damper on the imagination. Meanwhile, a virtual world can be virtual only when we can compare it to the real world to which it is anchored. Only then, a virtual world can retain its subtle ambiguity as an imaginary reality and maintain its pleasurable diversity without being addictive.

Michael Heim, “The Metaphysics of Virtual Reality” (1993)

[translated back to English from a text in Korean]

and to stop the erosion of social bond and solidarity is a fundamental goal of not just the real-world society but also virtual worlds inside a game. Robert Shapiro, in his above-mentioned paper, completely misses the mark by idealizing the MMORPG world as the virtual utopia of a free market economy. In games whose items are actively traded for real money, courtesy, consideration and civility have vanished from hunting grounds, giving way to greed (players from Chinese sweatshops are especially cut-throat competitors); this is a frequent subject of players’ complaints.

¹⁰⁸ Randy Farmer (Community Strategic Analyst, Yahoo!, Inc. and creator of the Habitat), in an article titled ‘KidTrade: A Design for an eBay-resistant Virtual Economy’ (Oct. 2004) proposed a game system for youthful MMORPG players, designed to be offline item trading-proof. The following is a list of the key points made in the article:

- Whether a game is RMT-prone or resistant is a question at the level of game design;
- The structural origin of RMT is the in-game item gifting system;
- No currency must be used in the in-game economy which should be modeled on a bartering economy.
 - Items must be divided into three categories, including collectibles (which may be tradable and non-tradable), consumables and customizers.
 - Items must be traded through an indirect transaction system like those used in the stock market or at auctions.
 - Gifting must be disabled at the system level, in favor of sharing (temporary free loans). A modest degree of traditional gifting, based on friendship, and reciprocal gifting may be allowed.

There is no spoon. There are only social relations mediated by a richly rendered communications platform. The question of “who should own this spoon?” should be understood as a question about what we want the social relations using the platform to be like. That question requires that we define a range of social relations that we believe the platform will enable, and a normative belief about how those relations should go. The rest is lawyering—constructing the detailed institutional structure within which these social relations will then be played out.

Yochai Benkler, “There is no spoon” (2004)

The blue pill and red pill are now in your palm. Thank you. ¹⁰⁹

¹⁰⁹ Ultima IV, Richard Garriot’s legendary RPG that I had the good luck of getting introduced to in 1985, is the first-ever game making use of the idea of virtue in association with each avatar. More than just a series of hunt missions and quests, Ultima IV had been a precious opportunity for the young man that I was to learn about human qualities and moral values (For example, killing off all enemy monsters, while it raises the player’s courage score, would lower his or her compassion score. Skull, a powerful weapon potent like an atomic bomb, is an item similar to the absolute ring of truth in *The Lord of the Rings* in that it is an object that must be ultimately destroyed. A player succumbing to the temptation of using Skull must face all his or her painstakingly earned virtue points vanish at once.).