Digital Ownership: Who owns your games &

What are your online assets worth?

This is a new age. When you spend your money nowadays, you don’t necessarily get a physical item to show off to your family and friends, especially within the video game industry. With a move towards digital ownership rather than buying a hard copy, it’s becoming rarer and rarer to find somebody with a game collection that’s completely disk based. Platforms like ‘Steam’ for PC’s, and the stores for the respective PlayStation and Xbox consoles are rapidly being developed. The ease of accessibility (among other reasons outlines in ‘Why People Buy Virtual Items in Virtual Worlds with Real Money’ (Guo & Barnes, 2007) has led to an increasing number of people ‘buying’ their games and assets from these markets. The word ‘buying’ is a difficult one to use in this context because, as this report will outline, the ownership of a game or game asset tends to be temporary in today’s market.

Temporary ownership of games and applications has recently been highlighted. Since 2014 Adobe have decided to stop selling their application as “boxed” (perpetual license) software; therefore, instead of paying a single upfront cost, a user has to pay an annual subscription fee. As the company are now providing a “service”, the user is no longer the owner of the application, but simply the owner of a licence to use the service as long as they pay the fees.

One reason for this change could be due to the monopolisation of the market. Huge companies like Apple, Sony and Microsoft now enjoy large control over the content of their stores, and therefore what is on their consoles. With “services” making more money, and other stores failing to offer the alternative: ownership of the application, there has been a move towards this methodology from many companies (Holzer & Ondrus, 2010). An example of this is PlayStation moving their online features from being included with the console to being reliant on the annual subscription. Apple were one of the first major mobile developers to create applications solely for their devices, making the app store the only way to get official apps for iPhones (Holzer & Ondrus, 2010). This meant, from a developer’s perspective, that they must make a deal with Apple to enter the App Store, thus forcing them to follow any guidelines set by the store. As a separate topic I will only touch on it briefly, but developers may instead have to curb their creative ideas in order to abide by Apple guidelines, and potentially undersell their game to fit enforced pricing brackets. The agreement signed by the developers means that Apple now own the application itself and a purchaser will only be downloading a license to use it. A licence that can be revoked at any time without warning, as outlined in their end user agreement (Apple, 2016).

Another reason for the shift towards the “service” of applications is the nature of the two-sided market. One developer moving towards this methodology and having success will have a domino effect and lead to every developer following suit as this is what the user is now used to.

Eisenmann, Parker, & W. Van Alstyne (2006) explain this in greater detail in ‘Strategies for Two-Sided Markets’ stating that the video game industry is a prime example of a two-sided market, where the need for the users and the need for developers are equally important.

It is unclear what happens to these accounts for service when the owner dies.

Current law offers no clear way of nominating someone to take over account on the death of the original owner. In most cases Wills only account for physical assets, therefore the digital assets now become worthless as they are inaccessible. If the next of kin is willing to battle through the courts they will be able to gain access to the account via the provider e.g. Steam. Their user agreement states that you may not “sell or charge others for the right to use your account” (Steam, 2016), further solidifying the shift to no tangible ownership. This line in the user agreement also means that the games you have acquired from the store and the sequential assets you have bought with the games no longer have any real-world worth. This is unless you proceed to break the user agreement.

The confusion between what’s capable of being passed through a will extends further than gaming; other providers such as ‘Facebook’ and ‘Yahoo!’ all have similar stances on transferability. This can lead to complications, as outlined in ‘Planning for the succession of digital assets’ (McKinnon, 2011). Here, a marine corporal had died in Iraq and his father wished to access the e-mail account to commemorate his life, however was denied access at first attempts. It seemed a hard line to take but was part of the original agreement the corporal had signed up for. This again leads me to question what we actually own where our digital assets are concerned. ‘Research on Internet Virtual Property’ (Lin, 2015) discusses several theories that are capable of outlining a person’s stance on who owns what when digital heritage is concerned. Backing for the idea that games belong to the player and should be able to be passed through a will can be found in Lin’s ‘Real Right Theory’ (2005). An alternative is the ‘Financial Claim Theory’; defined as “persons supporting this theory deem that the game itself and various auxiliary functions are a part of the services provided by the operator in accordance with the service contract between the consumer and service provider” (Lin, 2015), thus meaning the player lost their right to transfer the asset when they died. Both are valid opinions to have but current legislation exists in favour of the ‘Financial Claim Theory’ therefore giving it far more weight.

Copyright tends to go hand in hand with the debate concerning what you own in light of digitally downloaded games. When you have a physical copy of a game you can lend it to others with ease and without any serious exchange of money. This is not the case with digitally downloaded games; when you own the game digitally the only way (other than giving out all your account details) would be to burn a copy of the game onto a disk. However, this infringes Copyright laws, as you are making an illegal copy of the game without permission from the publisher. In order to understand the full scope of this issue we must look at what the ‘Digital Rights Movement’ (Postigo, 2012) tries to argue. He summarises by stating “A movement about consumer rights in digital content, [is] concerned primarily with the technological impediments to a digital media consumption” (Postigo, 2012). He goes on to add that the movement is fighting for ‘free culture’, meaning they believe that the reproduction and distribution of certain software is necessary for all to exercise their right to free speech. An example of this is the distribution of DeCSS (Decrypt Content Scrambling System) which allows non-windows and Mac users to decrypt DVD’s and play them on their laptops.

The arguments concerning copyright, intellectual property rights and ownership will become increasingly complex in the future with the development of AI (artificial intelligence) within games and other hardware. In Canada, the Law on ownership of ‘computer generated works’ is interestingly given to the Public Domain (Perry & Margoni, 2011). In some countries, the ownership is given to those who made the necessary steps to bring the creation to life. ‘An evolutionary step in intellectual property rights – Artificial intelligence and intellectual property’ (R. Davies, 2011) states this law is based on the outdated opinion that computers are simply tools for creation, and that when It comes to computer generated works there is a question as to who can claim ownership of this work. This includes the original programmer, the person who made the arrangements for the AI to produce this specific outcome and the data operator. The same principle can be applied to games. If a game includes AI and creates a house based on what you’ve told the system you like, and this house can be sold to other players for real currency, who owns this house and the money made? Is it you as you have told the system what you want? Is it the computers as the one to produce the house? Or is it the original programmer of the game as this is their work?

Like often, there are two sides of this argument; the discussion regarding the worth of digital assets is no different. The most obvious answer to this question is that once they have been purchased, the assets have no real value outside of the game. However, it isn’t to say you cannot trade within games. This is the way that most companies expect their assets to hold ‘value’; as the selling of an account is against the rules of use for most games, like I discussed earlier. In a legal sense an in-game asset will now no longer have any real-world value once purchased. For example, this is shown in ‘FIFA Ultimate Team’ You can buy ‘packs’ with real world money, giving you a player to use in your team, but if you decide that you don’t want this player anymore he can be sold in the marketplace for virtual currency. There is no way of getting back any of the real currency you put in.

The other side of this argument is that no matter how hard the game tries to stop the player from making a real currency profit from the game, this will be a near impossible task; there will always be trading outside of the game. Following the FIFA example, a player could sell an item to their friend for real currency then trade the player directly to his friend for in-game currency. Wang Lin expands on this by pointing out that players spend a lot of time and energy making the asset more ‘valuable’ from an in-game perspective, meaning it could have a greater value outside of the game (Lin, 2015). This is evident in many games, as it is a common theme to level up a character or certain asset. GTA online is a more complex example; it is possible to add custom features to your car to make it go faster or have better handling etc. and this car can be bought with real money or in game currency. However, when you customize the car its value will go up, and if you can find someone who wants to buy the car, with real world currency, you can make a profit. To summarise, if there is someone willing to pay real world money there will be a way to make the sale, meaning that in-game digital assets will still hold real world worth as long as there’s a market to sell to.

The question of who owns your digital assets, is one that will continue until there is legislation setting out definitively who owns what. Until then it seems that the law tends to favour companies, with most setting out in their ‘terms of use’ that they have the right to pull any product or service at their will. The clouded understanding of the law in regard to AI will only get worse with the extended development. Therefore, there must be a ‘shake up’ with this lack of legislation before a serious problem arises. As mentioned above, the worth of your digital assets depends entirely on whether you can find a market for what you are trying to sell. Although there are no official ways to make real currency from your digital assets in most games, there is often a player base willing to spend money on enhancing their chances of succeeding.

# References

Apple, i. (2016, 10 24). *LICENSED APPLICATION END USER LICENSE AGREEMENT.* Retrieved from Apple Legal: http://www.apple.com/legal/internet-services/itunes/appstore/dev/stdeula/

Eisenmann, T., Parker, G., & W. Van Alstyne, M. (2006). Strategies for Two-Sided Markets. *Harvard Business Review*, TBA.

Guo, Y., & Barnes, S. (2007). Why People Buy Virtual Items in Virtual Worlds with Real Money. *ACM SIGMIS Database*, 69-76.

Holzer, A., & Ondrus, J. (2010). Mobile Application martket: A developer's perspective. *Telematics and Informatics*, 22-31.

Lin, W. (2015). Research on Internet Virtual Property. *2015 8th International Conference on Intelligent Computation Technology and Automation*, 734-737.

McKinnon, L. (2011). Planning for the succession of digital assets. *Computer Law & Security Review*, 362-367.

Perry, M., & Margoni, T. (2011). *From Music Tracks to Google Maps: Who Owns Computer-generated Works?* Paper 27: Western University - Law Publications.

Postigo, H. (2012). *The Digital Rights Movement: The Role of Technology in Subverting Digital Copyright.* Cambridge, Massachusetts: The MIT Press.

R. Davies, C. (2011). An evolutionary step in intellectual property rights – Artificial intelligence and intellectual property. *Computer Law & Security Review, 27*(6), 601 - 619.

Steam. (2016, October 24). *Steam Subscriber Agreement*. Retrieved from Steam: http://store.steampowered.com/subscriber\_agreement/

# Bibliography

Johns, J. (2005). Video games production networks: value capture, power relations and embeddedness. *Journal of Economic Geography*, 151-180.

Hargreaves, I. (2011). *Digital Opportunity - A Review of Intellectual Property and Growth.* London: UK Government.

Farooqui, S., Goodridge, P., & Haskel, J. (2011). *The Role of Intellectual Property Rights in the UK Market Sector.* London: UK Intellectual Property Office.