

## Re-Mediating Research Ethics: End-User License Agreements in Online Games

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# Re-Mediating Research Ethics: End-User License Agreements in Online Games

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## Abstract

This article is a theoretical and empirical exploration of the meaning that accompanies contractual agreements, such as the End-User License Agreements (EULAs) that participants of online communities are required to sign as a condition of participation. As our study indicates, clicking “I agree” on the often lengthy conditions presented during the installation and updating process typically permits third parties (including researchers) to monitor the digitally-mediated actions of users. Through our small-scale study in which we asked participants which terms of EULAs they would find agreeable, the majority confirmed that they simply clicked through the terms presented to them without much knowledge about the terms to which they were agreeing. From a research ethics standpoint, we reflect upon whether or not informed consent is achieved in these cases and pose a challenge to the academic research community to attend to the socio-technical shift from informed consent to a more nebulous concept of contractual agreement, online and offline.

## Keywords

Ethics, Consent, Games

## Introduction: A Provocation

Can we agree about the role of agreements? When one clicks “I Agree” after being presented with what is often a dense, multiscreen wall of prose, to what is one really agreeing? What are the implications of obtaining this type of agreement as a condition of participation in online communities in virtual world games and play? As users, especially online game players, enter into the increasingly nebulous and binding contracts under discussion in this article, we as researchers correspondingly cast a critical gaze on the potential problematics and pitfalls associated with garnering user “informed consent” and the ethical practice of research around games and gamers. As some researchers of online virtual worlds have noted (Fairfield, 2010; Zarsky, 2006), the digital remediation of social scientific observation and data gathering brings new expectations of (and threats to) user privacy. Along with emerging sociotechnical forms comes a whole new set of responsibilities for social scientists.

Increasingly, researchers studying massively multiplayer online games (MMOGs) are making use of powerful techniques to gather large stores of data on players’ in-game behaviors, often without their explicit knowledge or consent. The use of sophisticated data-gathering techniques—including automated avatars that record the actions of other players’ avatars in a given in-game area and the transfer of server-side logs of player activity from game publishers to researchers—is made legal by the terms laid out in the End-User License Agreements (EULAs) to which players must agree in order to play. We argue that these practices,

however, can be seen as remediated forms of what Kai Erikson (1967, p. 373), writing before the advent of digital media, identified as “disguised observation” of populations and individuals without their explicit consent. And as he wrote at the time, disguised observation in which a researcher is engaged is unethical. Building on and extending the work of researchers who have explored privacy and ethics issues in other online environments (Debatin, Lovejoy, Horn, & Hughes, 2009; Gross & Acquisti, 2005; Reid, 1996; Zimmer, 2008), our look here at the EULA as a specific communicational form provides an opportunity to reassess research principles and practices regulating the “ethical” treatment of virtual world users under contemporary conditions of mass surveillance.

Specifically, we ask whether or not the criterion of “informed consent” can be met when players click “I Agree” to an EULA in order to participate in MMOGs. Furthermore, we ask about the ethics involved with considering those who submit their data in this manner to be “consenting” human research subjects. We describe our development of a

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small-scale pilot and a follow-up study with both MMOG players and non-MMOG players, which reframed the language and terms set out in virtual world EULAs into questionnaire form. We then discuss how participants' responses illustrate the contextual dissonance generated when the process of obtaining consent is embedded in what have become everyday routine software installation procedures.

To answer these questions, we have organized this article into three major thematic sections. First, given extant practices in the games industry and in academic research of collecting user-generated data on the basis of participation in online communities, we describe the EULA and draw attention to the conceptual leap between a binding contract and an ethical agreement. This section borrows from the concept of "contextual integrity" (Nissenbaum, 2010) for a critical examination of the conditions under which the assumption that "informed consent" has been obtained is made, a priori, through contractual terms in the process of service provision as with many online worlds. Second, to gain some initial insights into the degree to which users who clicked "I Agree" were informed about—and understood—the conditions to which they were "consenting," we share the preliminary findings of two small-scale field studies, the exploratory open-ended survey questions of which were drawn directly from the language of existing EULAs of several well-populated virtual worlds. Third, given the now conventional use of the EULA and the minimal level of virtual world user awareness about its use that we discovered in this study, we reflect on the changing nature of online research data, along with how ethical review boards might adapt to include a greater understanding of the implications associated with obtaining informed consent through forms of virtual world interactions and/or social media. We conclude by considering the epistemological limitations of conventional research procedures for obtaining "informed consent" and the ethical implications for the types of research being approved, specifically the possible distorting of perceptions of "risk" within populations of networked publics.

## Part I

### *Background and Rationale*

In recent years, data collection techniques that gather in-game information on players without their explicit awareness or consent have become increasingly popular and prevalent. Earlier studies used automated avatars that collected data on (presumably real) players' avatars in close proximity in-game, both in the now-defunct *Star Wars Galaxies* (Ducheneaut, Moore, & Nickell, 2004) and in *World of Warcraft (WoW)*; Ducheneaut, Yee, Nickell, & Moore, 2006; Williams et al., 2006). More recent studies have used computer programs to "scrape" data from the *WoW* Armory, a publicly available repository of *WoW* avatars (Harrison & Roberts, 2011; Yee, 2012). Another, large-scale, study of *Everquest 2* has made

use of all in-game data collected directly on players' in-game activities by Sony Online Entertainment, the game's publisher (Williams, Yee, & Caplan, 2008).

Each study varies in the degree to which research subjects<sup>1</sup> are made aware of data collection activities (not to mention the purpose of the research); in studies employing automated "bots" and in Harrison and Roberts' (2011) use of the *WoW* Armory, no mention is made of if or how the players whose activities were being recorded and analyzed were informed of, and consented to, the research. Similarly, and as we discuss in greater detail below, the *Everquest 2* study worked with the game's publishers to link players who responded to their online survey to their in-game activities, without informing the players themselves (Williams et al., 2008). Among these studies employing automated bots and/or automated data collection tools, Yee's (2012) study of the *WoW* Armory is distinctive in informing participants, and obtaining their consent, regarding the methods and purposes of the research.

### *EULA as a Means of Obtaining Informed Consent*

We wished to assess the ethical usability of data collected under the terms of the EULAs to which players must agree in order to install the software needed to access game-based virtual worlds. The question being posited is whether or not, or in what sense, the requirement of a "click-through" acceptance can be read as substantive consent. "Personal data is the 'gold' of a new category of companies" (Nissenbaum, 2004, p. 103), and though the information in question is often not confidential or sensitive in nature, the storage, aggregation, analysis, and mining of user data is something for which the research implications are just beginning to be seen.

It would make sense, then, that the users who agree to the conditions in EULAs, the researchers formulating new models of social research, and the ethical review boards that evaluate those new research designs may not necessarily be aware of the crucial issues arising from informed consent obtained wholesale and may be all too quick to click through on all fronts.

In explaining "contextual integrity," Nissenbaum (2004, 2010) posits two types of informational norms: norms of appropriateness and norms of flow or distribution. As "there can be great variability from one context to the next in terms of how restrictive, explicit, and complete the norms of appropriateness are" (Nissenbaum, 2004, p. 121), it is important to think of how informed consent might be achieved. Furthermore, "appropriating information from one situation and inserting it in another can constitute a violation" (p. 122). When one clicks "I Agree," "consenting" to a EULA as a condition of installing the software necessary for playing an online game, usually a game one has already paid for, the subsequent use of data collected on one's gameplay, for purposes beyond the game, may well NOT be something to

which the user has knowingly agreed, violating the first principle of research ethics: “informed consent.”

The insights from the studies we describe here, along with our everyday experiences with this growing convention, suggest little reason to assume that the user has provided informed consent. Yet this is the premise on which many studies have collected user data, often with the blessing of ethics research boards. Those same ethics boards would have been demonstrably more critical of qualitative social research, carefully scrutinizing and constraining the ways informed consent and user confidentiality are ensured.

“Insofar as these [mediated] relationships are valued, so would we value adequate and appropriate restrictions on information flows that bolster them” (Nissenbaum, 2004, p. 132). One may observe the “context creep” that Michael Zimmer (2010) documents in his critique of the Harvard Institutional Review Board–approved Tastes, Ties, and Time (T3) project using Facebook data. He asserts that the “researchers did not obtain any informed consent by the subjects within the dataset (nor were they asked to do so by their Institutional Review Board)” (p. 321). Given the evident violation of contextual integrity surrounding that study, he concluded that the T3 researchers “failed in their duty to engage in ethically-based research,” by the collection of data under one pretense and the use/distribution of the data under another for which there was no explicit authorization. Nissenbaum’s (2004) framework of contextual integrity further indicates, “What matters is not only whether information is appropriate or inappropriate for a given context, but whether its distribution, or flow, respects contextual norms of information flow” (p. 123). This position informs our survey discussed in the next section.

## Part 2

### *An Experiment in Contextual Integrity*

Using Helen Nissenbaum’s (2004, 2010) work on the concept of “contextual integrity” as a framework for understanding privacy expectations and their implications, we developed a short survey that recontextualizes the terms and criteria found in virtual world EULAs as straightforward survey questions. We wanted to explore, through contact with individual users, whether virtual world users agree to disclose what they had previously accepted under the terms of the EULA, if they were asked those questions explicitly. In the event that the answers from users were in the affirmative, one might have believed that there is no communication disconnect. However, our supposition was that if users responded negatively to questions posed in terms that were widely understood, one might be more inclined to question the condition of “informed consent” under which these legal contracts were made. We constructed an inquiry of this manner to highlight the ethical issues surrounding EULAs beyond those of technical liability, looking instead at the action and interpretation of everyday users.

In order to gain more understanding of these issues, we examined the following: (a) the contexts in which EULAs are “written and read”; (b) the specific terms of EULAs from popular virtual worlds such as *World of Warcraft*, *EVE Online*, and *Second Life*; and (c) the understandings of a sample of users, including both players and nonplayers. In developing the survey, we began by analyzing the EULAs from a set of virtual worlds including *World of Warcraft*, *Second Life*, *EVE Online*, *Aion*, and *Maple Story* in order to ensure that our questions were accurate and specific.

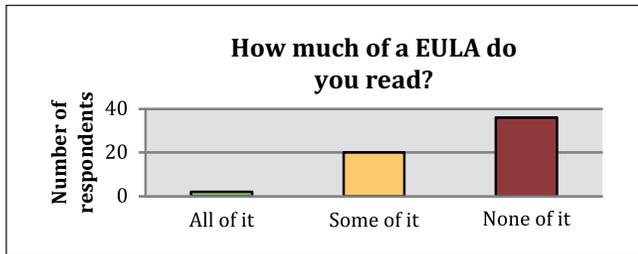
The survey consisted of two sections: The first asked participants questions related to their virtual world use (which virtual worlds/MMOGs they play, if any, and for how many hours a week), whether or not they typically read the EULAs for the virtual worlds/MMOGs they use, and two questions based on terms found in all the virtual world EULAs we looked at—whether they think it reasonable for a virtual world service provider to give in-game information collected on them to third parties and whether they acknowledge that they do not own anything they do in the game/virtual world.<sup>2</sup> The second part of the survey comprised questions relating to the specific virtual world/MMOG the participant is currently playing. For this study, we first recruited players of *EVE Online*, *World of Warcraft*, and *Second Life*. Respondents were university students, both undergraduate and graduate, with varying levels of online gaming experience. We began by recruiting 6 *WoW* players and 2 *Second Life* users, then expanded this with another iteration of the study to include 10 *WoW* players, 15 *EVE Online* players, and 31 participants who were not playing in an MMOG at the time, for a total of 64 respondents.

### *Initial Research Findings*

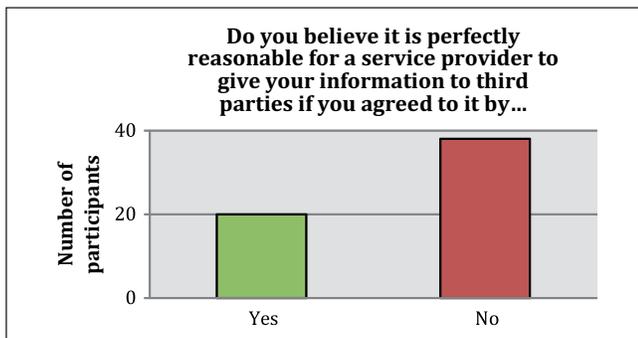
As this pilot survey was not intended to be generalizable to a broader population of MMOG/virtual world users but meant as a kind of barometer for assessing the “contextual integrity” (or lack thereof) of consent to participate in research embedded within the EULA, we are not concerned here with presenting quantitative results. Instead, we touch on areas where our participants’ answers align with both our own experiences and “readings” of EULAs (as researchers and as everyday users of the same technologies) and other, larger and more quantitatively driven studies of online social media. We also share some of the responses to the open-ended question we included at the end of the survey, where *WoW* and *EVE Online* players who participated in the study articulate their reactions to the terms and conditions, presented plainly and explicitly, to which they have already ‘agreed.’

#### 1. How much of a EULA do you read?

Whether they were playing a specific virtual world or MMOG at the time of the study or not, all participants answered the general question, “How much of a EULA do you read?” (Figure 1). As expected, the majority of



**Figure 1.** How much of an End-User License Agreement (EULA) do you read?



**Figure 2.** Third party access?  
Note. EULA = End-User License Agreement.

participants (36 out of 58, or 62%) answered they read “none” of a EULA, and only 2 participants (3%) answered they read “all” of it. This proportion of non- or partial-EULA readers among virtual world users is similar to findings reported in larger studies of social media users (see, e.g., Debatin et al., 2009; Gross & Acquisti, 2005).

## 2. Third-party access: Yes or no?

In response to the question, “Do you believe it is perfectly reasonable for a service provider to give your information to third parties (e.g., researchers, legal authorities, or financial agents) if you agreed to it by clicking, ‘I Accept’ on a EULA?” (Figure 2), a majority of participants (38 out of 58, or 65%) answered “no.” This is the provision, found in the MMOG/virtual world EULAs we examined, which enables researchers to collect data on users without their explicit consent—since “consent” is, in this case, elicited by the EULA.

This illustrates, in a small but empirically driven way, the disconnect between the EULA as a document that almost all our participants clicked through (as with the majority of social media users) in order to get on with the game, on one hand, and the actual provisions it covers and enacts—including, crucially, the provision that enables social scientists to observe and collect data on participants without their knowledge and explicit consent, on the other. Among participants in our

study of MMOG EULAs, this disconnect can be further explored through open-ended responses. The comments hit on a number of the same issues faced by application users of all walks of life, including various types of social media, music-sharing applications, as well as games, to the extent that all require the same click-through agreement processes in order to participate.

One of our WoW participants highlighted the restrictive conditions in which agreement has been obtained, writing the following:

In general, I think forcing users to scroll through a long EULA prior to playing a game is a bad way of communicating important legal information. It’s a nuisance and nobody reads them. I am, in fact, willing to sacrifice many of the rights mentioned in the above survey in order to play a game such as WoW, but *I have never read more than the first few words of the WoW EULA and if the above questions are representative of what I have been consenting to, then I certainly was not aware that I was doing so.*

Similarly, another WoW player wrote that while he expected the game company to gather his information for their purposes, he did not appreciate the distribution of his data to third parties:

While I don’t read the EULA or ToS [Terms of Service], I expect that they have the right to run the game, change it and do what they need to keep it growing. I don’t like them using my personal information or turning over to another party even government agencies without due legal process.

In a similar vein, we received these written comments from *EVE Online* players:

- “The EULA is far too long and ‘legalese’ to expect the average gamer to fully understand the contents.”
- “They need to be made more simple for everyone to understand—for example, two versions of it.”
- “Should be made simpler so they are easier to follow and read.”

These comments suggest that for these participants, the density, length, and obfuscation of their game’s EULA prevent a more straightforward understanding of the terms they lay out.

While the players point to issues in the ways the content and conditions of EULAs are presented—conditions that our questionnaire attempted to make more visible—other participants took issue in their comments with what they saw as manipulation and coercion on the part of game companies.

For instance, one *EVE Online* player wrote:

The idea that you basically sell your soul to spend your money and free time is a strange one, but we all seem to agree to it in order to play the game.

The majority of participants in our small study thus far stated that they do not read the terms of EULAs, and when questioned about third-party access in a straightforward manner, most said they would “not agree.” Ironically, clicking “I Agree” to their respective games’ EULAs, these players had already assented to the criteria.

The issues raised by this inquiry extend beyond technical liability. As participants’ open-ended responses to our pilot study demonstrate, when players are aware of the conditions laid out in EULAs, they often regard them with suspicion and as a “necessary evil” to which they must submit in order to enjoy the product. This is particularly problematic with regard to our study participants’ resistance to third-party access to data, as laid out in the EULAs in our study. In the next section, we discuss the implications for researchers engaged in the study of virtual worlds and MMOGs.

### Part 3

#### *Disguised Observation, Re-mediated*

In North America, where much of the research on MMOGs is being conducted, transparency and disclosure with regard to the practices and purposes of data gathering has been a hallmark—or at the very least, a goal—of social scientific research, since the publication of the Belmont Report in 1979. The Belmont Report offered the following guidelines for conducting research involving “human subjects”: As “autonomous individuals,” participants must be able to freely give consent to enlist in research and can withdraw at any time; and researchers are required to maximize the benefits to participants and minimize the risk, associated with participation in the study. These are, according to the report, the “basic ethical principles” that researchers are obligated to follow in conducting research with human subjects (<http://ohsr.od.nih.gov/guidelines/belmont.html#gob>). The report was issued in response to a number of exploitative studies, including the Tuskegee Syphilis Study and Laud Humphreys’s “Tearoom Trade,”<sup>3</sup> studies that trafficked in deception, displayed a lack of accountability of researchers toward subjects, and involved physical, emotional, and/or mental abuse.

These basic measures regarding informed consent, enacted in response to studies that have literally become “textbook” examples of unethical research practices (Babbie, 2002), seem to have little relevance or application to the large-scale studies of MMOGs that draw on the kinds of “unobtrusive” data collection techniques mentioned above (automated data collection avatars, scrapes of avatar repositories, and the transfer of server-side game publisher data to researchers).

#### *The New Gatekeeping: With Great Power Comes . . . No Responsibility?*

In a piece for the online periodical *Ars Technica* (Timmer, February 15, 2009), the author reports on a research study of MMOGs introduced at the 2009 American Association for the Advancement of Science conference (Srivastava, Williams, Contractor, & Poole, 2009). According to Timmer (2009), the research team characterized their interaction with Sony, regarding the possibility of acquiring logs of player activity over a period of years for Sony’s MMOG *Everquest 2*, as follows:<sup>4</sup>

[Researcher]: “What do you collect?”

[Sony]: “Well, everything—what do you want?”

[Researcher]: “Can we have it all?”

[Sony]: “Sure.”

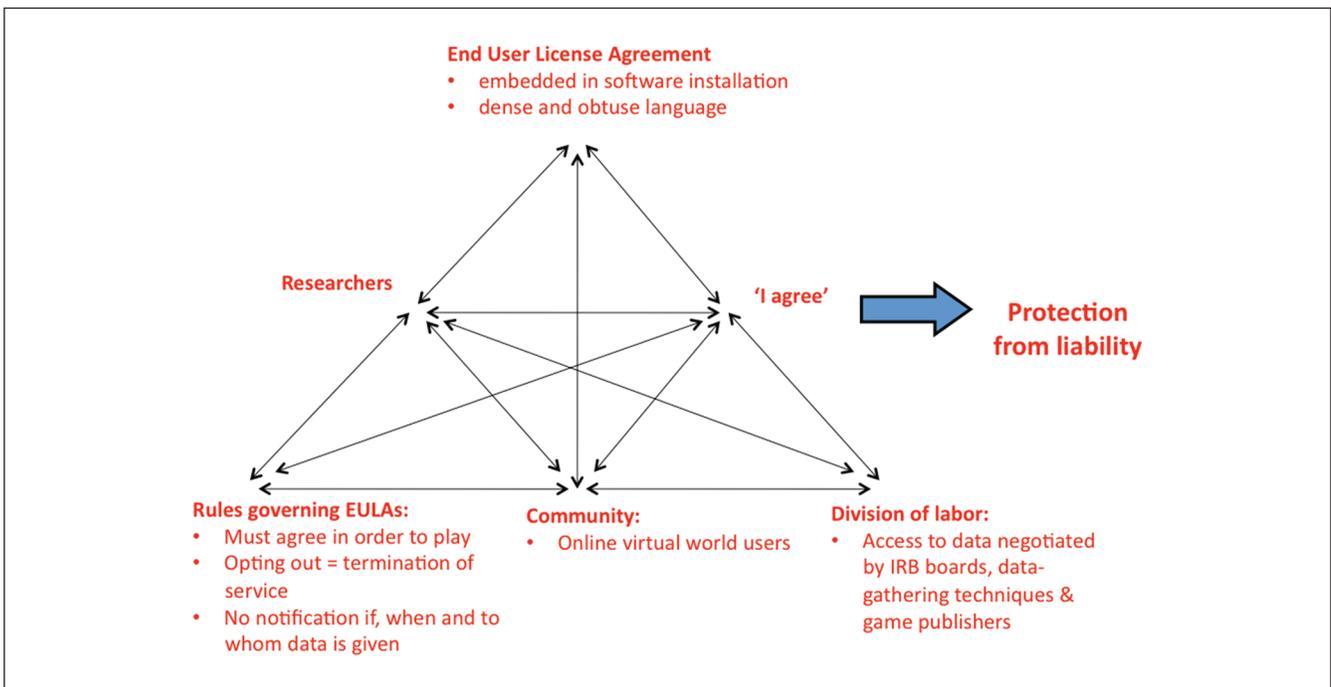
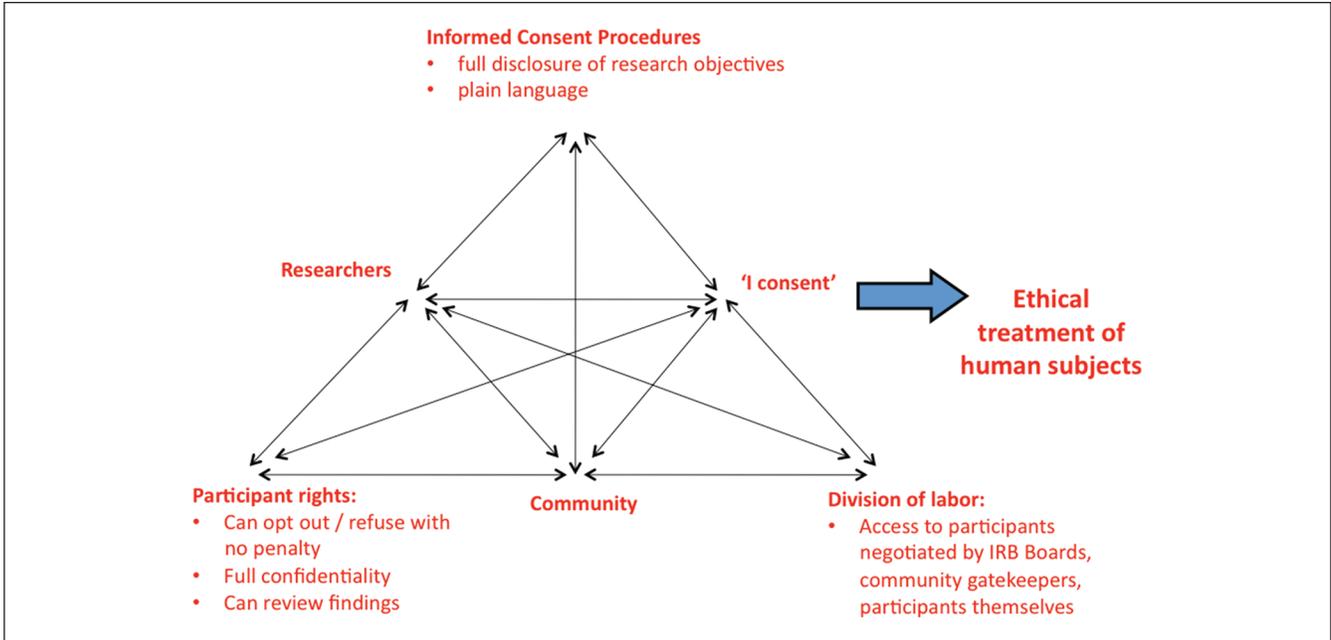
Missing here is a mention of the responsibility of “gatekeepers” and what that means: that those formal or informal community leaders and authority figures who, in conventional social scientific, anthropological, and ethnographic fieldwork, mediate access to a study population (see Atkinson & Hammersley, 2007, for an overview). The impression we get from this exchange between the game’s publisher and the researchers is that the challenges associated with the exchange of data are technical, not ethical. Interestingly, the ethical dimensions of this handoff are raised in some of the comments on the article. One comment reads as follows:

I don’t give a damn if they gave themselves the right to do it in the EULA, it’s just not right and I think there will be a lot of backlash as users find out about it. Furthermore, it’s been legally difficult for companies to fall back on the “It’s covered in the EULA” defense because judges have ruled a number of times that they’re so long and written in such tortuously legalese language, that it’s unreasonable to expect any normal person (user) to truly read and comprehend the whole thing.<sup>5</sup>

#### *Contextual Integrity “in Play”*

As illustrated by the responses from our study and by this story of the transfer of player data between a game publisher and researchers, the conventional practices developed over the past few decades by governments, ethics review boards and researchers to ensure the ethical treatment of human subjects are becoming increasingly outdated. Sociocultural activity theory (Engeström, 1990<sup>6</sup>) provides a useful means of comparing the two different configurations of relationships between researchers, participants, “gatekeepers,” and the texts and technological objects that mediate and enact these relationships, which are “in play” here.

Under the conventional “activity system” for human subjects research, access to a study population or community is



mediated both by the textual practices of institutional review boards (IRBs) that determine whether there are adequate provisions made to ensure participants’ safety and confidentiality and by the relationship/s between researchers and “gatekeepers” or key community members, who assess whether the researcher is trustworthy. Informed consent is obtained through an interaction between researcher and potential participant where the researcher discloses the purpose of the study and what is required of participants and informs the participants that they can withdraw from the

study at any time, for any reason, with no consequence to their involvement in that community; it is set apart, materially and symbolically, from the everyday practices of community members, designed to enable deliberate consideration as to whether or not to participate in the research. The desired “outcome” of this activity system is the participant’s voluntary and informed consent obtained without coercion in order to become involved in the research.

In comparison, the activity system enacted by virtual world EULAs, and operationalized in the large-scale studies

of virtual worlds mentioned above, is premised on the user's "blanket" consent to all the provisions of the EULA; their involvement in that virtual community is contingent on their agreement. Conventionally, it is the researcher's responsibility, as mandated by their IRB, to ensure the confidentiality and minimize risk for participants involved in the research. However, in these cases, the onus falls on the individual to protect *himself or herself* from harm or exploitation. Thus, individuals' only recourse to doing so is to *not* play. The whole activity system is designed to ensure the game publisher's protection from liability, rather than the protection of players' individual or collective rights. Clearly, this is a very different ethical foundation on which to build conscientious relationships with those individuals and communities whose practices we are trying to better understand.

As with Laud Humphreys' research years ago, recent large-scale studies of MMOGs are potentially groundbreaking, leveraging data-gathering techniques that are as powerful as they are problematic. The researchers involved frequently note that they are operating with a data set that offers unprecedented opportunities for quantitatively driven understandings of online sociality (Keegan, Ahmed, Williams, Srivastava, & Contractor, 2010; Williams, Kennedy, & Moore, 2011; Williams et al., 2008). But whereas some have argued that Humphreys' research, while exploitive, actually helped clarify the consensual, "victimless" and ritualized characteristics of the practices studied (see, e.g., Nardi, 1995), the benefits thus far to the human subjects involved in MMOG studies that use EULA provisions to access and analyze player data are less apparent.

### Potential for Use and Abuse of Data

At first blush, many quantitative, data-driven studies of online play seem primarily concerned with supporting the commercial success of game companies through suggesting ways of ensuring player retention (Ducheneaut et al., 2006; Harrison & Roberts, 2011). Other studies, using a combination of in-game logs (gathered without players' knowledge and explicit consent) and self-report survey data, characterize particular player populations as mentally unhealthy (Williams et al., 2011) or gender deviant (Wang et al., 2011). In some cases, such data may be informing the efforts of governments to track potentially criminal activity (Keegan et al., 2010); in other instances, researcher characterizations of their study populations might afford more potentially conflicting ethical implications.<sup>7</sup> The aim here is not to imply that researchers are deliberately undermining players' rights as research participants. Rather, it is to point out that under new sociotechnical conditions of mass surveillance, where the only recourse players have to opt out of observation is not to play, and where concerns over liability trump concerns around the ethical treatment of subjects, the capacity of potential study participants to have control or say over the research they are contributing to is substantially diminished. This has been a hallmark,

at least ostensibly, of social science research for the past three decades, the underlying assumption being that no one would *willingly* consent to research that might do them harm.

Furthermore, this mode of research—making use of technologies for "unseen" surveillance in the service of existing power structures seems to parallel what Donna Haraway (1988) wrote about almost 25 years ago in "Situated Knowledges." In that piece, Haraway coined the term *god tricks* to describe modes of scientific inquiry in which the researcher assumes a view "of everything" but "from nowhere" (p. 581), the aims of which are to create and refine technologies of control and organization. Companies and government increasingly use this mode of research that uses sophisticated data-mining techniques to analyze and create knowledge about consumers and citizens alike (Chow-White et al., 2011). Surveillance has increasingly become dependent on digitized information infrastructures, "which simultaneously made them even less visible and even more powerful, and also produced some specific kinds of coding" (Lyon, 2002, p. 245). One might ask, then, can those subsets of populations who are unable to give "informed consent" have data collected about them under the assumption that informed consent has been obtained?

### Ethics Review Boards and Perceptions of Risk

The implications arising from this line of inquiry reach beyond those of user advocacy to include concerns over what constitutes ethical research for the virtual world research community at large, and we hope to promote increased critical dialogue in this respect.

At present, there appears to be a lag in that IRBs have not kept pace with the advent of big data and associated online practices. Somehow, the situation has become such that not speaking with a person face-to-face has become a more desirable method for social research than embodied interaction, and more likely to be institutionally approved as enabling informed consent than in-person research methods (Kaufman, cited in Zimmer, 2010, p. 320).

Speaking from the experiences of those who do human subjects research in the social sciences, we have found using the same ethical guidelines and training used for the natural and experimental sciences to be inappropriate, and yet it is a common practice for IRBs. Based on insights from this study, along with those of the literature discussed in here in this article, we would advocate a greater representation of researchers who are versed with the implications of conducting online research in order to prevent genuine harm from being done to research participants/subjects, as opposed to merely perceived harm. Furthermore, an increased competency in evaluating research in this dynamic interdisciplinary field may enable a wider range of perspectives and inclusiveness of research that may otherwise be prevented from proceeding due to a lack of familiarity with research that may be on the edge of dominant models of inquiry.

### *Implementation: Play, But EULA Informed Consent Opt-In Must Be Clearer*

The ethics protocol training social scientists typically receive requires that we provide forms explaining our proposed research to prospective participants in plain and clear language and provide a channel for feedback, as well as the opportunity for the participant to withdraw from the study at any point with no negative consequences. A major issue we must confront is that research data obtained in the manner we have discussed provide no such opportunities to research subjects. Instead, anyone who has clicked through from the software installation screens into the game is now a “consenting research subject,” albeit one with no voice, no right to clearly explained information about how and by whom and for what purposes ones information will be used, and no right to withdraw without loss. Paradigmatically, in this case, should one retract assent from such a study, one also loses the ability to play the game one has purchased, participate in that particular community, or have whatever data one may have provided prior to retracting assent. What we are challenging is how the absence of these fundamental criteria for ethical research survives in the adjudications of IRBs as an acceptable equivalent to “informed consent.” Research ethics, we contend, are one kind of thing, and contractual legalities, quite another. Currently, however, they are regarded and treated by IRBs as amounting to the very same thing. With this kind of *carte blanche* permissiveness, what researcher would refuse the treasure troves of player data now made available?

### *Implications for the Games Research Community*

The implications presented by this work for the games research community are numerous. One is that researchers who derive user data indirectly may have a much easier time with IRBs than researchers who have direct contact with the individual research subjects, according to the prevailing perspective from the IRBs we have encountered, that direct engagement with research subjects is more risky to the researcher (and the institution that is potentially liable) than research that merely collects data in the background. The second is that the subjects of research in the data-driven studies are not nearly as aware that they are being researched, having been “informed” of what they have consented to only in the most technical of senses, and even then provided few if any details of the kinds of (and purposes for) research that will or can eventuate from researchers mining (and “fishing”) these large data sets. Third, this indeterminacy (because authorizing data fishing and mining techniques for “*carte blanche*” research mean that the risks of any as-yet unspecified study are of course unable to be anticipated) subjects these “consenting research participants” to unspecified possible risk and harm. Last, given that such data-driven studies tend to be privileged in terms of IRB approval, and

have now become better regarded by ethics boards as “minimal risk” than are face-to-face qualitative studies, more researchers may be inclined to conduct data-driven research in preference to participant (user)-driven research. In the end, we ask what this means for the types of research being conducted on games as a whole, what happens to the “gold standard” of informed consent for research ethics, what voices will be silenced in the process.

### **Conclusion: Thinking Differently About Agreements**

This article began with a provocation. Can we agree about the role of agreements? The purpose of this study was to foster a dialogue among stakeholders in the constantly shifting methodologies of digital game studies, with implications extending to the broader realm of Internet studies and cyberspace research more generally.

In the three parts of this article, we discussed the problematics associated with the EULA and highlighted the conceptual leap between a legally binding contract and an ethical agreement, arguing that as academics we must be cognizant of the qualitative differences between these two. Using an analytical model drawn from sociocultural activity theory to represent how the practice of seeking and giving informed consent has been remediated from a carefully customized interactive negotiation to a standardized automated step in the process of software installation, we took up and extended Nissenbaum’s (2004, 2010) concept of “contextual integrity” as a framework for determining whether or not informed consent had been realized.

In the second part of the article, we shared the findings of a pilot study and a small-scale follow-up designed to offer insights into user perceptions of EULAs, what they mean, and how those who clicked “I Agree” understood them. For the most part, users reported being neither informed about nor consenting to their “participation” in games research of any sort. And many expressed genuine concern about the terms to which they had ended up “agreeing.”

In the third part, we discussed the importance of dialogue within the academic research community about the nature of the EULA and the quality of user awareness indicated by our study participants—and, indeed, confirmed by our own and our own routinized, everyday practices of agreement in the process of downloading and installing software of all types. We reflect on the changing nature of online research data and how ethical review boards might adapt to include a greater understanding of the implications of technologically remediated processes for obtaining informed consent through online games, virtual worlds, and/or social media. The unsettling possibility raised by this study that we hope is NOT the case is that academic research, which has hitherto insisted on self-regulation by a substantive code of ethics, has, with neither discussion nor protest, abandoned, *de facto and in toto*, its commitment to ethical research and now requires, in its place, nothing beyond formal-technical legality.

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## Notes

1. Here and throughout the article, we deliberately use the term *subject* instead of *participant* in describing research where players seemed to not have known they were involved in a study as in (de Castell, Taylor, & Jenson, 2012; Taylor, 2008).
2. Of the EULAs for virtual worlds and MMOGs we looked at (*WoW*, *EVE Online*, and *Second Life*), only *Second Life* has provisions allowing users to own their virtual property.
3. This brief sketch of the Belmont Report's guidelines and history was taken from the "Basic Courses in Protection of Human Research Subjects" offered by the Collaborative Institutional Training Initiative (<https://www.citiprogram.org/>). This service offers certificates for researchers applying for approval from the IRB.
4. <http://arstechnica.com/science/news/2009/02/aaas-60tb-of-behavioral-data-the-everquest-2-server-logs.ars>
5. <http://arstechnica.com/civis/viewtopic.php?f=2&t=16296>
6. See also Kaptelinin and Nardi (2006) and Nardi (1996).
7. Keegan et al.'s (2010) look at "gold farming" in *Everquest 2* maps the social networks of players involved in the sale of in-game gold for real-world currency. The authors suggest that their work can inform the efforts of lawmakers and authorities in mapping real-life criminal networks, as if an activity that is disallowed by the game's publishers (and enforced by its EULA) shares the same degree of social, political, and economic complexities as, say, drug trafficking.

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