

## **An outline of legal aspects of Social Gaming in the Netherlands**

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### A B S T R A C T

This paper focuses on some of the current (2012) legal aspects of Social Gaming in the Netherlands.

#### *THE LAW ON SOCIAL GAMING*

The law and justice system pertaining to gaming and social gaming in the Netherlands and nearby Anglo-American countries has not been developed to keep up with, and from an airtight legislation under which everyday legal acts within the (virtual) world of social gaming can be addressed.

#### *APPLICABILITY OF LEGISLATION AND JURISPRUDENCE ON SOCIAL GAMING*

It is not unusual that when virtual conflicts or illegal events occur, a comparison is made with the physical (real-life) equivalent. These real-life crimes or misdemeanors are defined in the Dutch Penal Code<sup>1</sup> or the Civil Code<sup>2</sup>. A particular comparison pertaining to social gaming has been made by the Highest Court<sup>3</sup> in the so-called Runescape-case<sup>4</sup>. In this case, two suspects are accused of stealing virtual goods (a virtual amulet and a virtual mask). The court<sup>5</sup> and higher court<sup>6</sup> both determined that the perpetrator and co-conspirator are guilty of the accused facts, because a virtual amulet and a virtual mask are goods, as referred to in article 310 of the Penal Code. It is extraordinary that in these cases the physical Penal Code is applied to areas where this has been, up until now, not usual. Theoretically speaking, the stolen virtual objects are not a 'good' as referred to in article 310 of the Penal Code because they are, according to the legal definition, not goods that are "material objects, susceptible to human control". The conditions of 'susceptible' and 'material' are, theoretically speaking, not applicable. Nevertheless, the virtual objects are seen as a good, and therefore stealing virtual goods is punishable by law, because these goods represent a value in an economical society.

#### *LEGAL ASPECTS FOR SOCIAL GAMERS*

As a social gamer is not common to have property, obtain property and obtain rights to virtual objects or achievements in the game. In extensive licensing agreements in most games there are a lot of legal restrictions of what a gamer can do. Social gamers are often bound to play the game according to the rules drawn up by the game publisher and it is hardly possible to deviate from this. One common example of a breach of these extensive licencing agreements is selling game accounts of World of Warcraft , which is prohibited by Blizzard Entertainment (the creator of World of Warcraft ) so that the game account and all virtual goods remains property of Blizzard Entertainment. The company also notes that the virtual goods may not represent real-life market value.

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<sup>1</sup> Wetboek van Strafrecht

<sup>2</sup> Burgerlijk Wetboek

<sup>3</sup> Hoge Raad (der Nederlanden)

<sup>4</sup> Runescape-arrest (ECLI:NL:HR:2012:BQ9251, 31<sup>st</sup> of January, 2012)

<sup>5</sup> Rechtbank

<sup>6</sup> Gerechtshof

## *CONCLUSION*

Although this legislation and jurisprudence exists, the sale of thousands of accounts and virtual equivalents of crimes are being committed. The question whether the government can and will take legal action against these practices.