



When Firms Encourage Copying: Cultural Borrowing as Standard Practice in Game Spaces

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Some companies, such as Sony, actively fight the copying of their intellectual property. Yet there are companies, Sony among them, that sell and promote games in which copying is an encouraged norm. Four such spaces are examined here: *EverQuest II*, *LittleBigPlanet*, *Spore*, and *Second Life*. The four contain copies of, or homages to, cultural intellectual property. Users' comments regarding the issues around copying were also studied. Users are aware of the copying in these games and feel they should be allowed to remix culture, but they are confused about the legal specifics of copying and homage. Firms take the same approach to copying as users: They do it when they think they can get away with it.

A great many companies and their lobbying groups in the United States are actively fighting a worldwide battle against the copying of digital intellectual property. It is a legal, technological, and hegemonic fight. Yet some of these companies benefit from, encourage, and actively engage in copying intellectual property when it suits their needs, even though they actively seek to stop the same behavior in others. In what ways, under what circumstances, and why does this occur?

When Sony and other companies encourage copying, they send a mixed message: Copying is generally not permitted, but it is simultaneously allowed too—as they do it, support it, and benefit from it themselves. The conflict over copying is not just legal or technological in nature; it is also cultural. By looking at two online game spaces by Sony (*LittleBigPlanet*, *EverQuest II*), a game by Electronic Arts (*Spore*), and an online virtual world by Linden Lab (*Second Life*) as exemplars, we can see that widespread copying and support for copying is not just a cultural norm but a fundamental and playful human behavior (Benkler, 2006; Brown, 2009). As such, battles to eliminate it are doomed to failure. The companies involved in the battles over copying (and the definitions of copying) oppose it when it is beyond their control and threatens their revenue in the realms of movies and music, but they do not generally oppose copying—they may even support it—when it is within spaces they control and when they

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can benefit from it. In effect, according to this logic, copying in spaces outside of corporate control are an economic threat to those corporations, yet copying in a wide variety of spaces is a valuable part of their creative wealth (which would be threatened by copying outside their control).

When I was in college in the U.S. in the early 1990s, I owned a stereo manufactured by Sony. The stereo was designed to enable the user to copy a music CD onto a cassette tape. This was not some accidental use or a hidden feature. Sony, a company that is involved with music and movies among other business interests, was selling a device that allowed the copying of intellectual property—the very same copying that today is commonly labeled piracy.

That story omits some key nuances (such as the small fee on blank cassettes that went to the music industry), but the basic point holds. Some divisions of Sony accepted and embraced copying at one point in time, and today some divisions of Sony take a very different view. Sony is involved in music (Sony Music Entertainment, SME), movies (Sony Pictures Entertainment, SPE), and online holdings (Sony Online Entertainment, SOE), as well as producing personal computers and laptops. Through its membership in the Recording Industry Association of America (RIAA) and its membership in the Motion Picture Association of America (MPAA), Sony actively opposes copying some forms of intellectual property and supports labeling such actions as piracy. Sony has also gone so far as to put spyware on some Sony Music CDs, which then installed itself on users' computers. This resulted in a substantial uproar (Halderman & Felton, 2006; LaBelle, 2006; Mulligan & Perzanowski, 2007). Yet the SOE branch, involved with *EverQuest II* and *LittleBigPlanet*, takes a different approach. In *EverQuest II*, there are many examples where the game designers have copied the intellectual property of others. In *LittleBigPlanet*, the game is designed so that users can copy intellectual property, and users do widely. In this sense, *LittleBigPlanet* is a less overt version of my old Sony stereo.

And this is the central issue: Why is copying acceptable to Sony only when they are the ones making copies or supporting copying? Sony is sending a mixed message to consumers—copying is both supported and illegal—but there is another message here that is quite clear: It is not piracy when we (Sony) do it. But the people at Sony who copy intellectual property and put it into *EverQuest II* (*EQII*) probably aren't doing it for any subversive reasons; they are doing it because they are human, and as humans we are all driven to play and share (Brown, 2009).

Our biological playfulness takes place within technological and social contexts that change over time as technology improves and ideas about ownership change. This is where difficulties arise. Biologically, our fundamental drives have not changed in over two millennia, but in many jurisdictions the law is at odds with what technology allows us to do. For Sony, the logic of capitalism with its drive to increase profits provides a consistency to the apparent clash of interests across divisions. Although improved computer power presents economic opportunities to some, it is an economic threat to the established businesses of others. For some stakeholders, these factors are simultaneously both opportunity and threat.

As a longtime gamer and scholar, I had noticed the inclusion of cultural elements in games where users could make content, such as a region in Second Life devoted to Star Trek role-playing. The scholarly

implications did not occur to me until I was playing *EverQuest II* one evening and a guidemate showed me a magical set of pants he had won by killing some evil monster: torn purple pantaloons that made you strong, but also dumb. I realized they were the purple pants of the Hulk. The Hulk is the intellectual property not of Sony but of Marvel Comics, which is owned by Disney. I realized there were many other examples in *EQII* and other game spaces. Copies were everywhere, and game companies like Sony were actively supporting it. What was going on?

This article explores examples where those who are committing or aiding “piracy”—be it copying or homage—are from the same groups as those who protest the loudest against copying. By doing so, we can see when such companies as Sony accept copying tacitly or otherwise, and when they do not. This will lead to a better understanding of, and perhaps an explanation for, their actions across legal, technological, and cultural areas. Specifically, why do these companies allow copying when they also actively fight copying?

Background

The use, reuse, borrowing, and copying of cultural material has been researched by many (e.g., Coombe, 1998; Jenkins, 1992; Lessig, 2008). Culture makes culture, yet there is a tension between protecting IP and sharing IP (Aufderheide & Jaszi, 2004). Legal scholars have highlighted the problems with tight copyright control when it comes to digital copyright (Litman, 2001). The consistent premise is that overly broad and expanding intellectual property rights harm creativity (Vaidhyanathan, 2001), while the political-economic structure of capitalist nations drives this expansion (Bettig, 1996). The extent to which copying intellectual property happens is widely debated; researchers have pointed out how stakeholders such as the RIAA and the MPAA have consistently used fabricated and inaccurate numbers (Patry, 2009; Sanchez, 2008; Yar, 2005).

The line between homage and copying is not clear (Pang, 2005) and can depend on one’s economic interests. Raustiala and Springman (2006) observed that, in the fashion industry, “copying is occasionally complained about, but it is as often celebrated as “homage” as it is attacked as “piracy” (p. 1691). There is no clear definition of the difference between a copy and an homage; they are different points on the same spectrum, although Tushnet (1997) felt that, in the U.S., fair use can be used as a defense for homage and fan fiction. Overall, homage is a gray area. Depending on how different the homage is from the original, the homage may only be recognizable by those familiar with the original, so recognition can denote in-group status, and homage is considered to have an honorary function.

The in-group function of homage is important. Humans have been called “hyper social” and are driven to be a part of a community. Mastery of relevant cultural elements is one way of showing one’s in-group status, and just as play with others is a community-building activity (Brown, 2009), play with cultural elements through the creation and recognition of homage is an important in-group marker.

Defining piracy in a digital context is difficult, as different stakeholders have different views. As Johns (2010) pointed out, “An official study for the European Union once defined [piracy] rather impishly as whatever the knowledge industries said they needed protection from” (p. 6). Use of the word *piracy* is

a hegemonic attempt to delegitimize copying cultural items, and makes it easier to forbid copying legally and technologically. At issue are not only songs, movies, and some physical goods but also the complete range of digital goods. The hegemonic battle is paralleled by legal efforts such as those of the Digital Millennium Copyright Act (DMCA) in the United States, which takes away fair use exemptions for copying and technological efforts through digital rights management (DRM). The main players include the RIAA, MPAA and BSA (Business Software Alliance) all a part of the "intellectual property defense industry" (Johns, 2010, p. 498). For the anticopying forces, this is an economic battle, while for those who see the need to permit some forms of copying, it is about culture. Piracy of intellectual property cannot exist without the idea of intellectual property—an idea which has morphed and grown to include a greater variety of cultural forms over time—and ultimately, "intellectual property exists only insofar as it is recognized, defended, and acted upon" (p. 497).

Homage, then, is an effort to make a copy while steering clear of making such a good copy that the homage would be labeled as piracy—the marketing-friendly term for copyright infringement and trademark infringement, whether real or perceived. Piracy is a useful tool for fear mongering about lost profits and economic harm to struggling musicians and artists, while its sound bite quality prepackages it for the media and government committees.

Copies of, homages to, and the possibility of imperfect and unofficial copies of IP in game spaces is not new, nor are lawsuits over such items. Taylor (2009) pointed to a 2004 legal case in which Marvel Comics sued the companies behind the game *City of Heroes*, as players could make Marvel characters in the game (or at least visually similar characters). Many fantasy games are themselves derivative of Tolkien's Middle Earth, which is itself derivative of earlier ideas and stories. Even Sony's original *EverQuest* was full of homages, with "references upon references that could be spotted by alert players" (Marks, 2003, p. 88, as cited in Taylor, 2009, p. 144).

This is a tension between norms, law, and computer code. Lessig (2000) investigated the idea of computer code as law in virtual spaces, of real-world law as code for the real world, and the difficulties between the two. Dibbell (2006) raised questions over the ownership of player-created virtual goods and the relationship between copyright law and end-user license agreements (EULAs) as contract law but, as it is not a straightforward issue, leaves the tensions unresolved. Grimmelmann (2006) wrote how "true disobedience is impossible in a software-controlled space" (p. 155), meaning that if the code of a space allows a behavior (like copying), then it is allowed through its possibility, regardless of the norms of that space. Although U.S. law places restrictions on copying (and has allowances through fair use), and although EULAs are often highly restrictive, the code of spaces like those under analysis here take the opposite approach, allowing copying, as do the norms of the spaces. It is a contradictory and contested area. Grimmelmann emphasized that when a game's "formal rules—those its software enforces"—come "unmoored from the game's normative rules" (p. 154), the resolution should be in favor of the players, in a kind of virtual democracy.

Although there is a great deal of literature that focuses on the wide range of perspectives on copying and piracy, be it digital or not, there is little that looks directly at how some companies take what is essentially a contradictory stance toward copying, which is my focus here. The problems of overly

strong IP regimes, the hegemonic and technological battles, and the history of IP have been well covered, and it is hoped that this article can serve as further impetus to explore this area. Generally, norms and code trump law: If people can make things, including copies, they will do so. At times this creativity is suppressed by legal or technological means, in line with warnings from Vaidhyanathan (2001) and Litman (2001), yet laws and technological hurdles cannot stop humanity's creative drive, as Jenkins (1992), Karaganis (2007), and Lessig (2008) have pointed out. The reason we are in the midst of a multidecade expansion of the hegemonic, legal, and technological restrictions on copying is precisely because people are such widespread copiers. It is difficult—perhaps impossible—to stop people from this fundamental human behavior.

Description of the Game Spaces

There are four cases for this study: *EverQuest II*, *LittleBigPlanet*, *Spore*, and *Second Life* (see Table 1). They can be referred to as texts, games, or virtual worlds. Some people might refer to them as platforms or software. Regardless of what you call them—every label comes with certain assumptions—they are all computer-driven compilations of code created by people.

EverQuest II is a game space and 3D virtual world with elves and wizards, a massively multiplayer online role-playing game (MMO) where thousands of players can play simultaneously. It is played on computers running the Windows operating system and is run by Sony Online Entertainment. *EQII* does not allow users to create anything that is not placed in the game world by Sony, although users can and do cobble together items like fish tanks, using a variety of items. The copying in *EQII* comes from Sony, in the form of copies via homage, which is widespread throughout the game.

LittleBigPlanet is only available on Sony game devices (initially only Sony's PS3 console); the sequel, *LBP 2*, was released in 2011. It was created by Media Molecule and is published by Sony. In it, the user controls a little figure, a "sackboy" or "sackgirl," and the goal is to guide the character through a variety of levels. In game parlance, *LBP 2* is a 2D puzzle platform game: there is only up/down and left/right (two dimensions). The user has to figure out how to get to the end of a level (the puzzle) and has to make the character jump from platform to platform ("platform" is a generic gaming term). Users can make levels with a wide variety of level-creation tools, and level creation by the users is a major selling point of the game, although users do not have to make levels. The tagline for *LBP* is "Play. Create. Share." (As in play the game, create levels, and share them.) *LBP* has official downloadable content (DLC), which can be free or for purchase (from Sony) and which usually involves costumes for the user's "sackperson." Many players have posted videos on YouTube of the levels and costumes that they have made.

Spore is a simulation game (sim) published by Electronic Arts (EA) and created by Will Wright and the game company Maxis. In *Spore*, the user guides a multicelled organism through "evolutionary" phases: from a little spore, to a creature, to a tribe, to a civilization, to outer space. As the organism grows, the user designs many aspects relevant to its existence: The appearance and functionality of the organism, as well as its buildings, vehicles, and spaceships, are manipulated with the in-game building tools. The content that users make is shared, and (as in *LBP*) this is an integral component to the game.

Given the amount of content one can encounter in a single game, offloading some of the content creation work to the players was a good idea. *Spore* content is easy to access without the game, as EA makes it all available in a searchable and indexed form on the Internet in EA's Sporepedia.

Second Life, created and run by Linden Lab, is a 3D virtual world. As a virtual world, it is somewhat similar to *EQII*, broadly speaking, but *Second Life* is not a game in the same way that *EQII* is, as it has no intrinsic goals. Users can make, remake, delete, and remake again on the virtual property they own, so the content often changes. The norms are more stable than is the content, although different groups use *Second Life* for different purposes. Mostly, it is a virtual space in which some people make cool buildings and hang out with other like-minded people, make rather mundane shops selling clothes for avatars, study virtual worlds, or try to annoy other users.

Table 1. Relevant Game Elements.

Game	Company	Content Production	Game Type
<i>EverQuest II</i>	Sony	Company	Virtual World/MMO
<i>LittleBigPlanet</i>	Sony (MM)	Company and Players	Solo/Multi
<i>Spore</i>	EA (Maxis)	Company and Players	Solo
<i>Second Life</i>	Linden Lab	Players	Virtual World

The sample gives us two virtual worlds, one by Sony (*EQII*) and one not (*Second Life*), and one where users make most of the content (*Second Life*) and one not (*EQII*). It also gives us one nonvirtual world game by Sony (*LBP*) and one not by Sony (*Spore*). In both cases, content creation is done by the players, as well as by the company. By imposing variety across these variables, we should be able to identify any patterns (and theorize why such patterns are present) and see if there are behaviors which are unique to Sony. Generally, players make all sorts of copies, ranging from homages (inexact) to those as precise as the player can make. Companies, on the other hand, stick to the legally safer homage end of the spectrum or directly license content. This is an important part of the picture: The copies that originate with the companies in these cases are either high-quality and licensed or are homage and different enough from the original as not to be legally objectionable (while remaining recognizable). Given the right creation tools, users end up occupying the middle ground; they can make rough copies that aren't perfect, but that at times do stray too close to the original.

Approach

This study has two complementary components. Both focus on the four cases, which were chosen as a convenience sample. The first component is a sampling of derivative objects in these spaces (i.e., copies and homages). Given the differences in interfaces for these spaces and their intertextual nature, examples were collected by using a variety of methods: playing the games (or using the spaces if not exactly a game); searching through relevant web boards and forums; using Google search to find likely examples; talking to other players; and for *Spore*, using the Sporepedia to look for examples. This part of the study is nonexhaustive, in part because content constantly changes and is updated in these spaces, but also because the sheer size of these spaces makes compiling anything more than a sample impossible. When collecting examples, three elements are considered: (a) the identity of the maker (player or company employee), (b) its origin from other IP, and (c) its fidelity to the original item.

Content creation and sharing for each space was also explored; the spaces were not just played in a typical consumptive manner. Although it is likely that not every example of copied material was recognized when encountered directly, their identity as copies often became clear when other users discussed examples online. As these are all computer spaces, many have what Kaveney (2005) calls a "geek aesthetic." And as I am familiar with geek culture, many examples were apparent to me.

The second component of the analysis is a sample of what users of these spaces think about the relevant copying, homage, and copyright issues. This is a textual analysis, using material found online in web boards, forums, newsletters, various articles, and the like. It includes, when appropriate, the companies that control the spaces and the words and acts of their spokespeople and representatives. At times, user discussions focused on examples involving copies and copyright; these were explored to examine how users saw the issues.

These two methods allow for some triangulation, capturing what firms say they allow versus what they do allow and, in rough parallel, what users say about copying and what and where they copy. This combined and contradictory picture allows us to see the roles that copying plays for both firms and users.

Observations

As noted there are two types of content observed in this study. The first type focuses on the copied objects: what are they, who made them, and what conditions allowed for their creation? The second type is what users say about that content and the related copyright issues.

Examples of Content

Copies of intellectual property of many different companies were present in the four spaces, as was known beforehand, but the presence of any particular copy might stem from a variety of reasons. Items found across the four spaces were often from science fiction or fantasy genres, and sometimes the same items or cultural references were found across the four spaces. Items ranged from authorized

versions that looked like and were named after the original to more abstract items that were homage. Although hundreds of examples were noted, only a few will be mentioned here.

EverQuest II, like its prequel, is rife with homage. Since it is a fantasy-based game, many but not all references come from the fantasy genre. There is a major quest line based on *The Princess Bride*, a movie partially about pirates, as is the quest. There are occasional science fiction references that do not fully belong in a fantasy game, such as the reference to the Hulk's pants. One character is an homage to the actress Felicia Day ("Felice Aday") who, due to her work on the fantasy TV show *Buffy the Vampire Slayer*, is a popular figure amongst gamers and the sci-fi/fantasy crowd. There is also a line from the television show *The Love Boat*, which is thematically out of place, but is consistent with the playful inclusion of cultural references in the game. There is a quest loosely based on the board game *Clue*—a murder occurs in a library, and one has to determine who the killer is—which includes the signature line from the cartoon *Scooby-Doo* ("And I would have gotten away with it . . .").

In *LittleBigPlanet*, there is official downloadable content (DLC) available, usually in the form of costumes based on those from comics, movies and other games for users' characters. As official DLC, it is legally licensed from the IP owner. There are many examples (Sony, n.d.), most of which fit into Kaveney's (2005) "geek aesthetic" (i.e., from comics and other games). Users often have to pay for the DLC. Some users have made levels with stickers (they "stick" to the sackperson) in the design of a costume so they can have access to costumes that are not available as official DLC or that were not made available quickly enough to meet user interest. Images can be imported through photographs provided by the user. Some users have created "mall" levels full of stickers in the manner of a shopping mall. Sources for these stickers are, like the DLC, comic books, movies, and games. User-created costumes in *LBP* do not look perfect, and it is not clear if they compete with the DLC.

LBP also encourages users to create their own levels (in addition to making stickers). Although some user-made levels are wholly original, many are inspired by other ideas, so a *Star Trek* level might have a spaceship that looks like the *Enterprise*. As of February 2010, *LBP* users had made over two million levels (Perona, 2010). Levels based on other games are not direct copies in any simple sense; they are *LBP* interpretations designed to work with the *LBP* game mechanics. A level based on a 3D game has to become a 2D *LBP* level that brings to mind the original.

With *Spore*, users have created pretty much everything they want to, based on the capabilities of the *Spore* creature creator and the other creation tools for buildings and vehicles. Science fiction and fantasy movie references are pervasive in *Spore*. For instance, one March 2011 search in *Spore* netted over 117,000 results for creatures, buildings, and vehicles with "Star Trek" in the description or tags. *Spore* users have also made reproductions of sackboys and sackgirls from *LBP*. As of late March 2011, there were roughly 161 million created objects in the *Sporepedia*. Although some of these are not based on any preexisting IP or cultural objects, many are. Almost all of these objects were made by the players.

Like *Spore*, *Second Life* is mostly made by the players, and a lot of the original content is not based on existing IP, but some creations are. For instance, *Star Trek* fans have created a Starfleet region in *Second Life*. The world they have made includes dozens of details based on the many *Star Trek*

television shows and movies, but these details are not just visual details; they include norms as well (such as respect for rank). Paramount, which owns the *Star Trek* IP, has not always been tolerant of the creative work of *Star Trek* fans, especially in the early days of the Internet (Granick, 1997), when the extent of, and motivations for, fan-based reworking of culture were poorly understood. Searching through *Second Life* proved a bit harder than it was in other platforms, as the in-game content is not archived, nor is there a master directory of content. The majority of buildings, spaces, and outfits that I saw were not copies of other IP, although often they were copies of the look and feel of real-world generic items, such as buildings, cars, boats, and rooms, tables, and chairs.

The concept of free labor in these digital realms (Postigo, 2007; Sotamaa, 2010) is relevant here, as so much content is created by paying customers instead of by paid employees. As noted, there are more than 2 million levels in *LBP* (Perona, 2010), there were 161 million objects in the Sporepedia, and the vast majority of the *Second Life* world is made by users. That there is so much of it shows that people are quite happy to undertake this playful labor; Postigo (2003) noted how users appreciate the “ownership of the productive process” (p. 601), even if they may not have ownership of the final product. In these cases, the process of making appears to be more important to users than does legal ownership. The power relations at play here are not clear. Superficially, the game companies benefit from users’ work: It is “unpaid labor.” However, any one user will see only a small percentage of other users’ work, and much of that work is often not very good and not of value to the company. Users are never compelled to create, yet they do, although there are also users who are free riders in this respect. The real value here may be in allowing users to create and not in the majority of the creations. Other researchers have focused on user empowerment, democratic cultural production, or if firms are encompassing processes, which of them were formerly fan-based and viewed as egalitarian? Although valid frameworks, I am not sure they are relevant.

In many cases, the four spaces under study here had items from the same source, such as *Star Trek*, *Dr. Who*, the game *Portal*, and *Monty Python*. Given people’s propensity to play with culture they like, this is no surprise. Companies allow these copies to be made in their spaces, as it benefits the spaces and thus the companies. The users make copies because it is a fun, playful activity that allows the user to take part in making (generally) and also to make an object they enjoy. Furthermore, it allows the user to showcase not only their creativity and making ability but also their cultural competence for their in-group by making in-group relevant items. More simply, for users, it is part of the fun of gaming (Brown, 2009), but also of cultural play (Jenkins, 1992; Karaganis, 2007). As a longstanding practice, such cultural play may be hindered, but not eliminated by the expansive profits-driven intellectual property regime on which many scholars have focused (Bettig, 1996; Johns, 2010; Vaidhyanathan, 2001). An important part of the issue that does not get as much focus is that the marketplace is not monolithic. Piracy does aid economies (Karaganis, 2011), and companies that otherwise fight piracy benefit from allowing the copying found in the spaces described here. The capitalist intellectual property regime benefits from protecting IP (Bettig, 1996) and also from copying IP—when it controls the copying.

User Impressions

With *EverQuest II*, there are no widespread copyright issues because players make so little content. Although players do take screen shots of events and items they have made and then post those photos online, this is not considered a problem by either the players or the SOE division. I cannot find any discussion of the widespread homage/copying in the game as a form of copyright infringement. Possibly, this is because players do not consider the snippets of dialogue and the slightly changed references as straightforward copies; instead, players may view them as homage and further, feel that homage is acceptable under copyright law.

As such, I asked my guildmates for their thoughts on the issue. One said that she felt the examples in *EQII* were “definitely homage,” not copies, and she pointed out how “there are tons of them from movies, TV, books, even a crate that looks like the companion cube from [*Portal*]” (RM, personal communication, June 19, 2011). Another, who is a professional editor, replied,

I’m normally a hound for plagiarism and copyright violation. . . . but (1) I think this legally and ethically is more akin to parody/satire, which is fine, and (2) I always saw it as an homage. . . . You feel kind of hip and “in the know” when you spot them. (JFR, personal communication, June 21, 2011)

The experience of users in *LittleBigPlanet* has been different. There have been problems with copyright and *LBP* levels: Sony’s official policy, like that of most firms, is that “any creations you publish [must] not infringe on any copyright” (Bennett, 2008). This left some users confused and angry about Sony’s policy; one official discussion thread about copyright generated more than 5,000 comments (2008). Users questioned issues of fair use, homage, and other controversial areas of copyright. Users also complained that if Sony made a costume available for DLC, and it was a copyrighted costume, users should be able to make a level for the theme of that costume. As one user put it, “YOU are giving out mixed messages . . . here’s a god of war [*sic*] character but do not make a level to go with it. . . . I mean seriously **bleep**?” (Xecutey, 2008). Despite the removal of levels, copyright-protected material in the form of both stickers for costumes and levels is nonetheless present in the user-created material for the game, so it is not at all clear how consistently Sony enforces this policy.

Users feel that copying in a form that they see as homage should be allowed and that homage is an important part of the game:

From now on I won’t be able to play and create levels related to games, movies or persons I know and love. . . . The homages to games and copyright material were the best of *LBP*, we could identify musics, scenarios and mechanics related to the IP it was related to, that was the magic. (MK24ever, 2008)

If users do not understand where the line between homage and copyright infringement is, it makes it difficult to undertake attempts at homage: “Where is the line between homage and copyright law? The

supreme court of the US [*sic*] says homage and parody are legal. But this game is world wide. What is the standard?" (Coyote12, 2008).

Users also felt that a Sony-backed *LBP* design competition, held at New York's Parsons School of Design, encouraged users to copy existing IP (Tong, 2008). The winning entry, "inspired by the hit PlayStation 2 game *Shadow of the Colossus*" (2008), was "the finest example of what this event was for," said one Media Molecule *LBP* director:

That level itself looks awesome. [One of] the reasons we picked that level in particular is that they had this idea right at the start—"Let's make a Shadow Colossus level"—and they pulled that off. That's what's really nice about this whole event. People having ideas, learning to use the tools, trying it out, and making it happen. (Tong, 2008)

One user had strong feelings about the contest and Sony's stance towards copyright: "This is ridiculously stupid. The winner of the design contest is shadow of the little big collosus [*sic*]. Talk about sending the wrong message" (VixenTamer, 2008). It is not clear which Sony or Media Molecule employees were present at Parsons, but the message that some *LBP* users took away was clear: Copying is tacitly approved, even when it is a copyright violation, and the rules about copying and copyright will only be followed when Sony feels like enforcing them, resulting in random enforcement. Although this is clearly frustrating to some users, it allows many other users to make copies of IP and have them presented.

Spore has also encountered problems with copyright and users. That there would be problems was apparent during the beta (prerelease) period of the game, when EA released just the *Spore* Creature Creator (SCC). One reviewer of the SCC wrote

I could imagine Mr. Lasseter [of Pixar] and his Pixar animators using the [SCC] to prototype future animation characters, such is the sophistication of the tools and the flexibility they allow. In fact, as we flicked through Sporepedia, Mr. Vu [of EA] pointed out a very passable imitation of Pixar's Wall-E character in the library, created by a player. I wondered if Mr. Lasseter would approve of this as adding extra buzz for his movie or be more inclined to reach for the phone and call his lawyer. (Nuttall, 2008, paras. 6-8)

But as Nuttall (2008) was quick to point out, EA was aware of this problem: "On the opportunity to reproduce accurately characters, buildings, cars and other trademarked products, the studio says it will adopt YouTube's stance of taking objects down on requests from the copyright owners." (para. 12). Nuttall, like many in the *Spore* forums, blends trademark and copyright—both may apply—but as Litman (2001) and others have pointed out, copyright law is disputed among lawyers; most laypersons would not be able to understand its nuances.

One legal scholar (Connors, 2010) found *Spore's* EULA, which transfers copyright of created objects from their creators to EA, highly problematic: "Federal copyright recognition exists to reward the

creativity of authors, not third parties that happen to provide the tools of the trade to those authors” (p. 424). Some posters to the forums felt that EA had taken this approach so that if there were copyright problems, the responsibility of handling the legal issues would fall to EA and not to users. We can speculate about the motivations of those at EA who made this decision, but the tensions are clear enough. If users make copies of something that is the IP of another company, EA cannot have the copyright to it, yet under the license agreement, this is what happens. Copyright law is completely irrelevant in this case for the users, as users are never stopped from making whatever they like, be it a copy or an original idea, and indeed users do make whatever they want. Given the creation tools in *Spore*, the question of where the copyright ultimately resides—with the player, EA, or another company—is beside the point for users. EA, on the other hand, needs to be able to make legal copies of the users’ creations on a large scale. Transferring copyright to EA is not necessary for this, but EA’s legal team likely found it the simplest approach. And although copies in *Spore* are found only in *Spore*—thus, not posing the same economic threat as online music sharing like the original Napster—*Spore* acknowledges its users’ impulse to play with and create objects, which in many cases are copies. The platform itself encourages a culture of copying.

Even the endgame in *Spore* is problematic. The ultimate enemy in *Spore* is the Grox, a ruthless cyborg species. Many players have noted its similarity to the Borg, the ruthless cyborg species of *Star Trek*, and some users have pointed out that the original name for the Grox might have been the Grob, which is Borg spelled backwards (e.g., Grox/Trivia, n.d.). Others point out that the word *grox* is found in the Dr. Seuss book *Oh Say Can You Say* (Geisel, 1979). Keeping IP law in mind (e.g., Guineh, 2008), some players have posited that the choice of Grox was legally safer than Grob would have been because Grob was too close to Borg (e.g., *Spore Origin*, 2010). Players see the Grox—the main antagonist in the spacefaring part of *Spore* and thus the culmination of the game in some sense—as a derivative, a copy of IP that does not belong to either EA or Maxis.

Overall, *Spore* users show a lack of knowledge about copyright law, fair use, and their rights within the game as derived from the EULA, which can be seen in several threads in the official *Spore* forum regarding copying and copyright (e.g., *Spore Copyright infringement*, 2010; *Spore Creature creation*, 2008; *Spore Digital property*, 2008; *Spore Does EA get copyright?*, 2010; *Spore copyright*, 2011). Although users know that all of these things exist, there is considerable disagreement as to what it all means, what they should do, what the law says, and how the law is interpreted in the real world. One *Spore* player received a trademark infringement notice and noted that the designs related to the notice were taken down, but the player never understood what the issues were (*Spore Copyright infringement*, 2010). The problem is not that users are ignorant of the law. Users know enough about copyright law to know that it is a confusing realm of copyright, fair use, DRM, EULAs, trademark, intentional misrepresentation of the law by content companies, and continual attempts to change the law by the lobbying firms of the content companies. The problem is that the entire realm is not clear.

EA suffered a severe backlash due to the copy restriction software it placed on the game itself, initially limiting users to installing only three copies of *Spore* (later increased to five). This caused a protest through Amazon.com’s rating system, something that consumers use on occasion for such complaints. As of June 2011, *Spore* had received 3,314 ratings on Amazon, but had averaged only 1.5

stars out of a maximum of 5 stars. Fully 2,649 ratings were just 1 star, as many used the low ranking as a form of protest against the DRM, although some users clearly felt that the game was simply not very good (an assessment I share). I did not find any commenter who connected EA's use of DRM (Totilo, 2008) for controlling copies of its IP (the game) to EA's uncontrolled allowance of copies of the IP of other firms (in the game). Maxis cared about controlling its own IP, but not the IP of other firms—all for Maxis's financial gain. (Note that most user complaints about DRM weren't about copying per se; they were about control over one's computer.)

Users' understanding of copyright issues are found and expressed across forums and games. One *Spore* user wrote that "another game called Little Big Planet [*sic*] has rules against trademarks, and will delete any content not made by the company that has anything to do with another game/movie/book it seems" (Imperix-prime, 2010). Again we see some confusion with the differences and overlap between trademark and copyright.

In *Second Life*, Linden Lab gives the copyright to user-created items to the user through the *SL* terms of service, which overcomes a potential problem with derivative works (in terms of using *SL* to derive a creation in it; see Carson, 2007). Internally to *Second Life*, there was a problem over copying items that the original creators within *SL* didn't want copied. There is a piece of software called CopyBot that allows users to copy in-world items, even if the item is marked as noncopyable (Au, 2006a). Linden Lab is aware of the problems that stem from copying and copyright, as are many *SL* users. Concern over CopyBot sparked numerous discussions, many of which were in *SL* itself and therefore not recorded).

The CopyBot problem can be explained with an example. Let's say I make (digital) clothes for avatars in *Second Life*. I make my own designs and sell them. If people could just copy my designs with one mouse click, there would be no incentive for me to create them in the first place if my main motivation is sales (this parallels copyright in the real world). Digital copying is easy. Linden Lab made it so that the creators of digital goods in *SL* could flag their creations as "copyable" or not. If I want to sell clothes, I can flag them as not-copyable. However, CopyBot ignores that copy flag and allows copying.

The reaction to CopyBot by those who sold items in *Second Life* was highly negative. People shuttered their stores in protest (Au, 2006a) and also held in-world protests, with a "mob of avatars waving signs, [and] shouting slogans" (Au, 2006b, para. 1). One Linden Lab representative said that CopyBot had "caused tremendous worry among content creators . . . in particular, they are concerned about theft of their creations, and the potential for unscrupulous people to undercut their prices and essentially take away their business" (Harper, 2006, para. 1). Eventually, Linden Lab made the use of CopyBot a violation of the *Second Life* terms of service. Although CopyBot did challenge the rights of creators in *SL*—rights which copyright is supposed to protect—at the same time it also threatened Linden Lab's business model. On its face the CopyBot problem appears to be one where copyright law was upheld in defense of the individual artist and creator, but similar to the other cases here, the issue was really about a larger corporate entity. The CopyBot problem was not solved through the U.S. legal system; it was solved by Linden Lab dictating terms of service and the *SL* EULA.

CopyBot has not been the only IP-related problem in *SL*. Trademarks are a problem, but *SL* users don't complain about it much, as the majority of them don't have trademarks and instead benefit from using trademarks without permission. One legal blogger wrote that "misappropriation of major corporations' trademarks in Second Life is so ubiquitous, so safe, and so immensely profitable, that it has become a wholly transparent part of Second Life's bustling commercial landscape" (Duranski, 2007). Some *SL* users have also sued other users over alleged copying and copyright infringements (Henderson, 2008).

Overall, users' opinions and actions in regard to copying vary, as users are not a monolithic group. Many know that homage is allowed, but homage itself is a gray area, and if homage is allowed, it means that other things may not be. Many users want firms to be consistent in the application of the rules and are willing to accept different rules in different spaces, but they would like those rules to be clear and applied consistently to both the users and the firm itself. Users may complain when their copies are taken down, but they don't complain when they are allowed to make copies that are in violation of a EULA, copyright law, or trademark law. And as we see in the *Second Life* examples, users complain when their economic situation and legal rights in regard to unauthorized copying are threatened, but not when they themselves are infringing on trademark. Users are also aware that allowing copying in some instances benefits the firms in question. In some cases, users' attitudes parallel the overall attitude of the content industry: They want copyright upheld when it benefits them, but they want to be free to ignore copyright when it doesn't.

Discussion

There are many examples of IP belonging to other firms throughout these spaces, with many common elements found across all four and with a range of accuracy. Accuracy, it turns out, can mean more than just visual accuracy: Accurate norms for behavior in the player-made *Second Life Star Trek* region, for example, are an important part of the homage, although the region is also accurate visually.

In spaces where users can make content, they will make derivatives of the culture they like, so we have the same content across spaces—typically, items that fit Kaveney's (2005) geek aesthetic. In the one space in this study where players can't make this kind of content (*EQII*), they don't do so; instead, the company employees do. These items also typically fit Kaveney's (2005) geek aesthetic, but not all do. Our biological drive to play (Brown, 2009) is the main factor here. When combined with our current technological capability, this drive puts us at odds with our current economic and legal framework for intellectual property, creating tension between different stakeholders. Those who warn about restrictions to copying (e.g., Vaidhyanathan, 2001) should be heeded, especially when the copying, homage, playfulness, remixing, or fair use takes place in the open market of ideas. Nonetheless, we see that users take part in these activities across a wide range of spaces and situations (Jenkins, 1992; Karaganis, 2007; Lessig, 2008).

Because of this tension, on occasion some items were removed from spaces for copyright reasons, but this was difficult to verify because I was trying to find things (levels, etc.) that no longer existed. Given the presence of so many copied elements in the spaces, removal was erratic. Generally,

users are aware of copyright, but are confused by copyright, fair use, trademark law, and EULAs. Most have no idea what their specific rights are, but they still have strong opinions.

Economics appears to be a driving force behind the type of copying allowed and the frictions that arise. In *EQII*, it is all homage, which is not problematic enough for lawsuits against Sony. The homage in *EQII* makes it a more enjoyable gaming experience. In *LBP* and *Spore*, users make copies of their favorite things, Sony and EA profit from positive game experiences, and these items do not harm other economic interests such as the in-game DLC for *LBP*. In *Second Life*, some users willingly infringe trademarks to sell items, as pointed out by Duranski (2007), and the battles over copying seem to be mostly between camps of *Second Life* users—those who sell items and those who would copy them.

With its rampant cultural play of in-jokes, references, and homages, *EQII* is still very much a copy culture. The role of users in such spaces is to be consumers of copied cultural goods. I was unable to find any online discussion of copyright and the homage that occurs throughout *EQII*, so it seems safe to conclude that users do not see this type of copying as problematic. That they see it, however, is clear.

In the other spaces, users are instead encouraged to be active cultural borrowers and remixers. But whether the space allows user borrowing or not, the message is consistently that the controlling corporate entity directly supports and encourages copying cultural elements. It is an important part of the spaces under study here: *Spore*, *Second Life*, and *LittleBigPlanet* could not thrive without the ability of users to create items. As such, the copying of cultural items—wherever on the range of copying from piracy to homage any single instance may fall—is an integral part of the culture of these spaces and of the economics of how the space is run.

There are two types of value generated by these piracy cultures. The first is straightforward pecuniary value generated through creating and maintaining a popular game or virtual space, where new player-created content helps keep the space interesting to established users, such as with *Spore* or *LittleBigPlanet*. The second is the sense of community belonging gained when users show their knowledge of appropriate cultural homages and when they showcase their ability to create the objects in the space.

Sony's SOE division, through *LittleBigPlanet* and *EverQuest II*, actively encourages copying of intellectual property. Meanwhile, Sony's music and movie divisions, through their membership in the RIAA and the MPAA, spend millions to crack down on piracy, to develop technologies that hinder copying of their products, to monitor and track online copying, and to expand the legal regime that restricts, delegitimizes, and criminalizes copying. The RIAA and the MPAA both are considered to have coauthored the early 2012 bills regarding IP in the U.S. Congress, SOPA, and PIPA, which led several prominent Internet sites, such as Google and Wikipedia, to stage a day-long blackout in protest (Mahanta & Baumann, 2012).

The use of IP that is neither owned nor licensed by the relevant company in these spaces, especially the spaces owned by Sony, produces two different messages. One is that copying is piracy unless you are doing it in a space we control. The other message, which subsumes the first, is straightforward: Copying is not allowed unless it is something from which we can profit. The people at a company like Sony may fear loss of revenue from copies of Sony-controlled music and movies, but copies

of IP in such spaces as *LittleBigPlanet* and *EverQuest II* benefit the company. These companies focus on the financial bottom line, fostering cultures of piracy when it benefits them, while users and game designers enjoy playing with culture in these digital spaces. There is a tension between political economy and longstanding cultural practice: A narrow view of economics calls for greater control, yet such controls conflict with human's use of culture.

Conclusion

The problem is wider in scope than just one of game spaces. If copying (by whatever name) is allowed only in corporate-controlled spaces, we will lose the vibrant creativity that is so prevalent in humanity—creativity that fair use and other laws are supposed to support. The warnings about overly restrictive intellectual property regimes are accurate as are the studies that demonstrate irrepressible human creativity. Creativity and its products can be monetized, and this monetization is at odds with people's drive to play with and copy cultural items. We see the tension here in the removal of some copied objects (but not others), the confusion in users' comments, and the extreme EULAs from companies that nonetheless allow leeway in what they permit. Copying in game spaces is a complex interaction of human playfulness, legal battles, and economic control, but it is one that mirrors the same issues in the broader world.

Little has been said about how some forms of creativity are being moved into corporate-controlled spaces like the games under study here, with the accompanying copyrights, trademarks, and EULAs. Users' enthusiasm for creation and playful copying seems boundless. Although copyright regimes have strengthened considerably in recent years, it is not clear that either digital piracy or copying has declined. If anything, users are able to copy more than ever before. Users expect corporations to enforce copyright, or they at least accept that corporations can and will do so, yet users do not feel that corporations respect copyright laws. Corporations are attempting to rewrite copyright laws and circumvent the government's legitimacy over granting and reinforcing copyright. That firms, such as the ones in this study, especially Sony, encourage copying in their own spaces under their own enforcement, is a twist on how the copyright battle was expected to play out. Instead of moving directly to destroy users' ability to copy, there is an interim step: Move copying into controlled spaces first, even though those spaces encourage copying. How this contradictory step will play out is not yet clear.

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