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ADR Online? An Analysis of Multiplayer Video Games and ADR Processes

Charles Malette

Imagine yourself playing an online game called *The Sims Online*¹, a game created by Electronic Arts. You create a new avatar² and log into the game, ready to meet new people. You begin playing the game, meeting other people online and generally goofing around. You eventually earn enough in-game money to purchase a home within the game. All is well in your new home until someone runs by you shouting obscenities. You politely ask the person to stop it. One day later, as you tinker with the virtual car parked in front of your virtual home, two men in black suits walk up and calmly ask to talk to you. After you introduce yourself, they recommend you watch your behavior or there will “be consequences.” Then they walk away. You are obviously confused. What just happened? Were you threatened?

A week later, the same person runs by again, shouting obscenities. For the second time, you tell him to stop, even calling him a “jerk.” Later, four men in black suits arrive at your house, asking to talk to you. You invite them in to your virtual home, offering them some virtual refreshments. Seconds later, they begin trashing your home, throwing property around, ripping things off the wall. One of them goes up and then steps on your character’s foot. After completing this, the men tell you to watch your back and stop hassling their friend, or else you will face even more consequences for your actions. You are stunned. “Who do you think you are!” you exclaim. One of the men turns back and laughs. “The Mafia, of course,” he chuckles, smashing up a lamp as he leaves.

¹ Created by Will Wright, an online game that allows players to assemble their own virtual worlds and play as nearly any character their wish.

² An avatar is the digital embodiment of a player in a video game. In online games, players create an avatar and use this character as their representation in the virtual world.

The Sims Online is based on the popular Sims franchise³, allowing a player to create a virtual character, or avatar, and interact with other players online. *The Sims Online* is one of many newer games focusing on social interaction and working together with other people for a common goal, in this case building a town and virtual community. Unlike older online games, where the player takes on the role of a knight, wizard, or other medieval-based character set in a fantasy world populated by dragons, kings, and the use of bartering or gold as currency, online games are increasingly finding themselves taking place in a futuristic or modern setting, allowing players to take on a modern role. While early games allowed people to supplement their income in adventure games by having some type of trade skill, these games allow you to pay practical jobs, like a handyman, a mechanic, and a baker. These games exist to offer players a fun way to interact online, stressing social interaction and offering a modern twist on roleplaying. However, as is the problem with any game involving some type of social interaction, people are going to have disagreements or just want to spoil your good time. How can a person still enjoy these games yet settle disputes quickly and effectively?

As a law student involved in the Alternate Dispute Resolution Program at MSU College of Law, I have been fascinated by the mechanics of ADR and how its processes can assist people in settling disputes quickly and effectively. Many people engage in ADR processes each and every day, yet many people do not know that there are ways they can improve their skills and seek neutral third-party help to resolve their disputes. Most people that utilize ADR, including the services of the American Arbitration

³ The Sims, also created by Will Wright, differs from most games in that it lacks any plot or game-run event. It is akin to *Seinfeld* in the game world: a game about nothing. Most players will play it just to meet others and engage in social interaction.

Association, are either attorneys with a cash-injected client base, or larger companies that need stability and rules in their dispute processes.

While ADR is a fascinating topic, many people in “regular” society do not know how it works, nor of its existence. Many online games, while they feature user agreements which dictate what rules a player should follow and urge some type of respect for other players⁴, rarely have neutral decision makers when players have in-game disputes. Cooperation and mutually beneficial problem solving seem to be the last thing on most players’ minds.

As a life-long gamer, I’ve always wanted a more “effective” dispute resolution system to exist online. Many resolution systems have no prior precedent and depend on underpaid workers or “trusted” players to mete out their own version of justice, depending on the dispute and the facts. No process exists to effectively monitor these people, nor to lay down some type of rules which carry over in the game. Furthermore, while some games may try to have rules that apply to settling disputes in the game, with the frequency of people playing many online games at a time, each individual agreement can create confusion in the games.

Therefore, I make a recommendation to any ADR provider: this paper will examine the likelihood of successful execution of a major ADR provider (in this case, the American Arbitration Association) entering an online game world and applying ADR processes to resolve the disputes of players in those worlds.

⁴ User agreements, if they exist at all, often have rules that prevent players from harassing others based on sex, race, orientation, national origin, etc., and to refrain from trying to ruin the fun and enjoyment of a game (this is basically the equivalent of contractual good faith). For examples of user agreements, look at the *Ultima Online* and *Everquest I/II* user agreements for a list of the various terms present in them.

Hopefully, this paper will not only show that ADR providers like AAA can enter virtual worlds to create some type of ADR system that will carry over to multiple games, but it will make players aware of ADR as a method of resolving their disputes, in the virtual world and the real world. Also, this move, while daring, would allow organizations like AAA to branch out from their existing client base and enter the exciting and uncharted waters of virtual worlds to assist people in the need of dispute resolution.

ADR PROCESSES AND APPLICABILITY TO ONLINE GAMES

No matter what position you hold in society, you are eventually going to be involved in a conflict, dispute, or negotiation. Conflict, dispute, and negotiation can take many forms: fighting over control of the television remote, trying to get a promotion, working to obtain raises for your employees, haggling over a TV, or getting an extension on a term paper. The people you will have the conflict, dispute, or negotiation with can be people you've known for years or complete strangers. Part of settling disputes and negotiating favorable terms is to utilize various techniques, social skills, and facts specific to the case to resolve any conflict or dispute and complete a negotiation. We solve these conflicts by utilizing Alternative Dispute Resolution.

Alternative Dispute Resolution (ADR) refers to any means of settling disputes outside of the courtroom⁵. These processes were considered "alternative" and legal supplements to state-sponsored dispute resolution⁶. ADR processes include

⁵See the Legal Institute Website at <http://www.law.cornell.edu/topics/adr.html>. Further information on ADR can be retrieved from the site. Any basic ADR textbook will also give a similar definition.

⁶See the Wikipedia, a free online encyclopedia, at http://en.wikipedia.org/wiki/Alternative_dispute_resolution for further historical discussion of ADR.

arbitration, mediation, and negotiation, to name a few⁷. In negotiation, the interested parties resolve their disputes, agree upon further courses of action, bargain for individual or collective advantage, and attempt to create an outcome that is mutually beneficial, all without⁸. In mediation, a third-party neutral assists two or more parties in order to help them negotiate a settlement or agreement, with concrete effects, on a matter of common interest⁹. In arbitration, the parties to a dispute agree to submit their respective positions (through agreement or hearing) to a neutral third party for resolution.¹⁰

Whether or not many people are aware of it, gamers engaged in ADR each day. Haggling over prices of items sold by a player, determining which particular cave to explore with friends, or trying to have a player thrown out of a game for cheating allow players a chance to utilize ADR. However, many players lack specific skills and knowledge of these processes, and most gamemasters¹¹ are ill-equipped, based on time and resources, to give players the experience they need to resolve disputes.

In the real world, ADR providers exist to facilitate agreements and help parties resolve disputes efficiently, quickly, and with a set of pre-existing rules to add stability and predictability to dispute resolution. Providers such as the American Arbitration Association (AAA)¹² exist to administrate, manage, and promote the use of alternative

⁷ There are many more processes which can be explored, but for purposes of simplification and for brevity, I am listing the big three of the ADR processes.

⁸ See the Wikipedia, a free online encyclopedia, at <http://en.wikipedia.org/wiki/Negotiation> for more extensive and related information.

⁹ See the Wikipedia, a free online encyclopedia, at <http://en.wikipedia.org/wiki/Mediation> for more extensive and related information.

¹⁰ See the Wikipedia, a free online encyclopedia, at <http://en.wikipedia.org/wiki/Arbitration> for more extensive and related information.

¹¹ Gamemasters, which first emerged in the pen and paper game *Dungeons & Dragons*, refers to employees of the online game company or trusted players which serve as administrators or arbitrators of disputes between players.

¹² Visit the American Arbitration Association website at <http://www.adr.org> for extensive information on ADR processes, services provided, and useful ADR information.

dispute resolution¹³. As it stands, AAA is limited to the real world only, and has not ventured into any online games or realms¹⁴.

This is to the detriment of AAA. While arbitration is a popular system and is often touted as an inexpensive alternative to litigation, the reality is that arbitration is just as expensive as litigation, especially with the ultra-high forum costs¹⁵. Coupling this with the fierce competition between ADR providers¹⁶, it would make sense for organizations like AAA to expand their services. Since online worlds are quickly becoming modern in nature and feature various disputes, the time is right for AAA to pounce at this exciting new market.

THE DEVELOPMENT OF ONLINE VIRTUAL WORLDS IN VIDEO GAMES

Most video games feature some type of inherent virtual world where the characters, conflicts, and plot of the game exists. Few video games actually take place on Earth, preferring to have the setting exist in a fictional world where ordinary rules do not apply¹⁷. The creation of these virtual worlds often determines what type of conflict resolution system will exist.

At first, video games featured very primitive worlds and goals¹⁸. Steve Russell, a student at MIT in the early 1960s, tinkered with a computer program to create the first

¹³ See the American Arbitration Association website at <http://www.adr.org/sp.asp?id=21996> to view the mission and goals of the organization.

¹⁴ That is not to say that many of the principals of ADR and innovations are not used by AAA, it is just that AAA has not taken any credit for the development of online game company user agreements or ADR processes.

¹⁵ See the Public Citizen website partial report summary at <http://www.citizen.org/publications/release.cfm?ID=7173> for more information.

¹⁶ See Samuel Estreicher & Matt Ballard, *Affordable Justice through Arbitration*, Disp. Resol. J., Nov. 2002 – Jan. 2003.

¹⁷ There are various reasons for this, from the creativity and imagination of the game designer to the refusal to set games in the real worlds to avoid offending certain countries or people.

¹⁸ This is mainly due to the limits of technology and the medium. Now games are capable of nearly anything due to the storage spaces of CD-ROMs and DVD-ROMs.

videogames of all time, *Spacewar*¹⁹. The game was a battle between two rocket ships, allowing two players to fire projectiles while trying to maneuver around each other until the other player's ship was destroyed²⁰. Al Alcorn, employee of Nolan Bushnell's legendary company Atari, created *Pong*, a simple game which allowed players to simulate a table top version of tennis²¹.

After a slew of games that were largely "shoot'em ups"²² and puzzle-based, developers began to create more exciting games with identifiable characters featuring major conflicts. However, unlike the traditional sense of "good and evil" which dominated most children's views, games began to take on a deeper meaning. *Donkey Kong*²³, created by legendary game designer Shigeru Miyamoto²⁴, featured a large monkey named Donkey Kong kidnapping Paula, the girlfriend of Mario, an Italian plumber²⁵. When creating the game, Miyamoto stressed that Donkey Kong wasn't evil, but misunderstood, "nothing too evil or repulsive."²⁶ Even when games were in a primitive state, game designers began to realize that characters and conflicts have more than one side to them. While other games would feature characters that were evil

¹⁹ See Steven L. Kent, *THE ULTIMATE HISTORY OF VIDEO GAMES: THE STORY BEHIND THE CRAZE THAT TOUCHED OUR LIVES AND CHANGED THE WORLD* 18 (Random House 2001).

²⁰ See *id.*

²¹ See *id.* at 41-42.

²² Shoot-em ups are games that require the player to press buttons rapidly and blast away enemies. Early arcade games, such as *Asteroids*, are examples of shoot-em ups.

²³ *Donkey Kong* is one of the most popular arcade games ever created by Nintendo by Shigeru Miyamoto, and it also resulted in an intense legal battle between the upstart game company and movie titan Universal Studios over Donkey Kong being similar to King Kong. See Kent, *supra* at 210-14. Thanks to the legal skills of attorney Howard Lincoln, later the president of Nintendo in America, Nintendo won the lawsuit and successfully sued Universal Studios for unauthorized use of their licensing agreement. *Id.* at 215-17.

²⁴ Shigeru Miyamoto is considered the most successful game developer in history. Originally a toy maker and hired by Nintendo for graphic design, Miyamoto tapped his imagination to create some of Nintendo's most successful franchises, including the *Mario* series, the *Legend of Zelda* series, the *Star Fox* series, and is credited with bring funding the developer of the successful *Pokemon* franchise. See generally *id.*

²⁵ Possibly the most popular video game character in history, it is rumored that Mario, originally called Jumpman, was named after the owner of Nintendo's New York warehouse.

²⁶ See Chris Kohler, *POWER*UP: HOW JAPANESE VIDEO GAMES GAVE THE WORLD AN EXTRA LIFE* 36 (Brady Games 2004).

incarnate²⁷, many games featured characters with several layers to their actions, and often tragic stories that made them victims of circumstance²⁸. One thing stood out: in these games, not everything could be taken at face value.

What could be taken at face value was a sense of “rules” or “justice” that existed in the realms. Most modern games had a system of dispute resolution or code of ethics. While early games, mainly because of technological limitations, did not feature such deep systems, most games featured some type of ADR process inherently in it. Some games structured entire sections of the game around this concept²⁹. However, none of this really took shape until the rise of the Internet, and technology reached the ability to allow hundreds of thousands of players to enter virtual worlds.

Computer games³⁰ were always on the forefront of allowing multiple players to team up and play games³¹. One of the earliest examples of this was *Doom*³², created by id software³³. During the creation of *Doom*, co-designer John Romero³⁴ mentioned to

²⁷ Many early villains were one-dimensional and evil. In *Super Mario Bros.*, Bowser, Mario’s turtle antagonist, is just an evil ruler who wants the princess. Later games would expand on villains and give them extensive background to either make the player feel sorry for them, understand their motives, or hate them even more.

²⁸ Later games would feature villains that weren’t truly evil. In *Final Fantasy II*, Golbez, the evil wizard villain, is actually the brother of the main good character and is simply being brainwashed by the true villain, a dark sorcerer named Zemus. In *Brandish*, the sorceress stalking your character thinks you killed her father. Many games would expand upon these themes and create further dilemmas in the games.

²⁹ In *the Magic of Scheherazade*, a Middle-Eastern tinged roleplaying game made for the original NES, players are forced to barter for some items in advance in the game.

³⁰ Most games discussed earlier in this paper are console games, made for the home market. Computer games are made for the computer and often feature more online capabilities, making them more applicable to the purposes of this paper.

³¹ Online games allow multiple players to play games over their computer either head-to-head in action games or to exist and adventure in a vast online world where thousands of players can be online at the same time.

³² *Doom* is one of the most successful computer games in history. Created by the legendary id software, based in Texas, *Doom* was a first-person shooter that dropped an unarmed space marine on one of the moons of Mars, surrounded by evil demon spawn from Hell. For more on this legendary game, see generally David Kushner, *MASTERS OF DOOM: HOW TWO GUYS CREATED AN EMPIRE AND TRANSFORMED POP CULTURE* (Random House 2003), for a complete picture on this historic game and its influence.

³³ A list of all the games created by the Texas-based id software, as well as a list of its employees, designers, and current projects, can be found at id software website at <http://www.idsoftware.com>.

technology designer John Carmack³⁵ his desire to see some type of networking ability in the game³⁶. Networking would allow multiple players to team up over phone lines and play the game either cooperatively or against each other. Carmack eventually added this feature to the game, and it was met with widespread success. Later, the creation of DWANGO³⁷, a product that allowed players to dial up other players across the country to play the game, took the world by storm³⁸.

With players able to interact with people across the world, the Internet eventually hit mainstream. Games like *Diablo*³⁹ emerged, allowing players to team up and engage in dungeon crawling⁴⁰. However, a new problem emerged with games like *Diablo*. Many online games, like *Doom* and *Warcraft II*⁴¹ were relatively simple in design. *Doom* players either attacked each other or fought monsters together. There was no need for monitoring by a neutral third party. *Warcraft II* players experienced similar results. But with *Diablo*, players have much more abilities to interact. The game's interface allowed players to make many more decisions, such as what monsters they wanted to attack and

³⁴ One of the legendary creators of *Doom*, Romero is credited with the game design and building of the levels. He also worked on *Quake* before leaving id software in 1996 to start his own game company, Ion Storm, and produced the *Daikatana* in 2001.

³⁵ The head technology designer for id software, Carmack is credited with making the first side scrolling game engine for computer games, and for designing the game engines in *Commander Keen* series, *Wolfenstein 3D*, *Doom*, *Doom II*, *Doom III*, *Quake*, *Quake II*, *Quake III: Arena*, *Hexen*, and *Heretic*.

³⁶ See Kushner, *supra*, at 148-49.

³⁷ Dial Up Wide Area Network Games Operation, a method of allowing multiple players in an area to play games over phone lines. Now obsolete because of the widespread use of the Internet.

³⁸ See Kushner, *supra*, at 186.

³⁹ *Diablo* is a dungeon-crawler game created by Blizzard Games. The game is set in a fantasy world where one of the prime evils of Hell, Diablo, the Master of Terror, escapes into the mortal realm to destroy the world. Players could join via Blizzard's free online game provider, Battle.net, and play the game with players across the world. For more information, visit Blizzard's website at <http://www.blizzard.com>.

⁴⁰ Dungeon crawling is a style of game where players team up or play solo to obtain better equipment in various settings. Most of these games are of a medieval or fantasy style and require the player to find items, weapons, and armor. Players often sell or trade their unneeded items for in-game currency or other items.

⁴¹ A strategy title by Blizzard Games, *Warcraft II* allows players the chance to assume the role of one of two races, Orcs or Humans, and fight other players in a strategy game, using their characters to wage mini-battles. For more information, visit the Blizzard Games website at <http://www.blizzard.com>.

different areas to explore. Often players would get into a dispute over the various treasure found in the game. Also, *Diablo* was prone to cheating, allowing players to break the rules of the game with little to no consequences⁴².

While most games required a user agreement⁴³ to play, these agreements did very little to help resolve conflict. Most user agreements (also known as terms of service) were the rules a player accepted in order to play the game of a company⁴⁴. The terms of service featured the responsibilities of both parties and basically boiled down to what a player should do when he plays a game⁴⁵. If a player broke one of these rules, they would be banned and be forced to abandon their character or to forfeit the money they paid for playing in the online world⁴⁶. Most of them were geared toward protecting a company from legal liability should a player attempt to cheat. Later, they were used to delete accounts of characters who were caught cheating⁴⁷. However, no other game touched up a firestorm of the need for independent monitoring than *Ultima Online*.

The *Ultima* series was created by Richard Garriott⁴⁸, who is often considered to be one of the greatest contributors to the computer gaming business. The *Ultima* series consists of roleplaying adventures featuring a lone hero called to the fictional world of

⁴² This would later change. Hacking is prevalent in online games, and many players discovered the ability to create items or make themselves invincible. Most games would adopt a strict anti-cheat policy and ban players from playing games if they cheated. Banning resulting in a loss of characters and any fees paid if the game required a monthly fee.

⁴³ User agreements, or terms of use agreements, are simple contracts that people sign before they play a game. The user agreements detail just what a player can and cannot do, often requiring a player not to use racial language, refrain from spoiling the enjoyment of the game for others through cheating or harassment, etc.

⁴⁴ See the Wikipedia, an online encyclopedia, at http://en.wikipedia.org/wiki/Terms_of_service for more information on this topic.

⁴⁵ Some behavior is explicitly allowed, including stealing from other players via the game mechanics.

⁴⁶ This is one of the largest grievances filed against a company.

⁴⁷ Deletion of a character is the most severe punishment in an online game, requiring a player to forfeit their online avatar identity and any progress they have on that character.

⁴⁸ See the Moby Games developers biography at <http://www.mobygames.com/developer/sheet/bio/developerId,483> for more information.

Sosaria to stop evil from spreading across the land, were huge sellers on the computer⁴⁹.

They were an example of just what a person with good imagination could do.

Eventually, Origin created *Ultima Online*, a massive multiplayer online role-playing game which allows hundreds of thousands of human players to enter a virtual world and play online, interacting with each and adventuring⁵⁰. The game, featuring a top-down isometric view, allowed players to create a human character and pick from dozens of skills, ranging from camping to magic. The player could then team up with other characters and go adventuring. The game even allowed players to work together or even kill other players. As can be expected, a game with features this deep caused many problems.

A game of this magnitude of rife with problems. First off is the player-killing problem⁵¹. Many players did not like being killed by other players and would complain. Second was the bug problem, since massive games of this magnitude often have exploits that other players would try to abuse to the disadvantage of other players. To maintain some sense of order in this world, the game features many people called “gamemasters” which patrol the area and attempt to resolve player disputes and police the game world⁵². A gamemaster is often considered the arbitrator of the game world, at least in roleplaying games⁵³. Unlike a traditional roleplaying game, where the gamemaster is more of a

⁴⁹ See the Wikipedia, a free online encyclopedia, at <http://en.wikipedia.org/wiki/Ultima> for more information.

⁵⁰ See the Wikipedia, a free online encyclopedia, at <http://en.wikipedia.org/wiki/MMORPG> for more information. MMORPGs make up the majority of online games.

⁵¹ Player killing exists in the game mechanics of a game. It allows players to kill other players during battle. Some players are completely against this sort of game and prefer to hunt monsters. Some online games completely revolve around this concept.

⁵² See the Wikipedia, a free online encyclopedia, at http://en.wikipedia.org/wiki/Ultima_Online for more information.

⁵³ See the Wikipedia, a free online encyclopedia, at <http://en.wikipedia.org/wiki/Gamemaster> for more information. Gamemasters are huge topic and are often prone to abuse.

“creator” and “maintainer” of the world, the gamemaster is the administrator of the world, making sure players do not cheat and making sure people are kept happy. However, while these people exist to enforce the rules, this is often easier said than done. Many gamemasters are employees and often have more work to do. It can sometimes take hours to obtain the help of a gamemaster to resolve a dispute. Furthermore, gamemasters rarely have “proof” to work with, relying on the testimony of another player. An experienced con artist or cheater can often turn the tables on a frustrated player and get them in trouble with the gamemaster. Furthermore, gamemasters can play favorites, giving exemptions to their friends or taking the word of someone they know by the very nature of that relationship. This system is widely open to abuse in most games.

Other online games are very prevalent, including *Everquest* and *Asheron's Call*. One thing remains constant in all of these games: as more and more players flock to a game, the potential for conflict among players increases. One must note that all of these conflicts exist in “fantasy” worlds⁵⁴. As games continue to become modern, many regular disputes have emerged. One of the biggest ways to handle “disputes” now is through vigilante justice, as shown in *The Sims Online*.

*The Sims Online*⁵⁵ is akin to a virtual dollhouse, allowing players to create an avatar in a virtual world and interact with others⁵⁶. Unlike other games, which often have plots or overall goals that must be attained by the players in the game, *The Sims Online* stresses the achievement of personal goals: players help their avatars dress, eat, build a

⁵⁴ While there is an increase in modern games, many people prefer fantasy games because of the ability to engage in magic and sword fights. Many of these games are based on *Dungeons & Dragons*-style rules, a popular game with many game players.

⁵⁵ While *The Sims Online* has yet to meet its target audience, various changes could help it become more popular, including customizing features, characters, and décor, which is present in the regular *Sims* franchise.

⁵⁶ See the Wikipedia, a free online encyclopedia, at http://en.wikipedia.org/wiki/The_sims for more information.

home, work out, and have fun⁵⁷. Most importantly, the game has some consequences for actions: players can be killed in various ways, through starvation, electricution, or viruses (http://en.wikipedia.org/wiki/The_sims). The game prevents another player from directly killing others in the game (SOURCE). However, the game is subject to various “seedy” elements: prostituion, player harassment, and other abuses have been discovered in the game, usually resulting in a banning (http://en.wikipedia.org/wiki/The_Sims_Online). Another element that has entered the game is the Mafia.

Several players organized a group called the Sim Mafia of Alphaville (SOURCE). Stressing that it is for roleplaying purposes, the leader of the Sim Mafia, Jeremy Chase, stresses that the Mafia is in response to the inability of Electronic Arts, creator and maintainer of the game, to respond to player complaints⁵⁸. While the game lacks the ability to carry out actual organized crime and the Mafia insists they are out to have fun, some are skeptical about their abilities to turn it into an fun and effective experience⁵⁹.

One aspect stands out for the Sim Mafia: the Sim Mafia saw a need (i.e. inability of Electronic Arts to handle complaints by players), and decided to turn it into a fun experience. While this experince could be developed more with the right game design, another way would be to incorporate ADR provider services into the games.

WILL THIS WORK

⁵⁷ See the Wikipedia, a free online encyclopedia, at http://en.wikipedia.org/wiki/The_sims for more information.

⁵⁸ See Hiawatha Bray, *Boston Globe*, retrieved from the Boston Globe Website story posted 1-14-04 at http://www.boston.com/news/globe/living/articles/2004/01/14/justice_has_its_price_in_sim_world.

⁵⁹ See Islog, posted 6-7-03 and retrieved from <http://www.izzyweb.com/index.php?p=78>.

Since the ADR processes have been discussed, and the makings of the virtual worlds have been discussed, the question remains: can an ADR provider like AAA actually penetrate a virtual world and offer its services to the players and their avatars? Would AAA, which provides actual ADR services to attorneys and major companies, want to get involved in online disputes, many which are simply “fictional” in design and lack the traditional dispute resolution needs in real-life disputes? While it may sound silly, I feel that AAA should penetrate this market.

According to the AAA website, the ADR provider is “dedicated to the development and widespread use of prompt, effective and economical methods of dispute resolution.⁶⁰” In addition, AAA wants to service and teach people about ADR processes⁶¹. AAA stresses its need for “innovative process knowledge to meet the conflict management and dispute resolution needs of the public now and in the future.⁶²” I would say that the future is now. Many people now play online games. And these are not just the traditional “lonely boy” model of game players. People of all ages now play computer and console video games. Studies have shown that 66% of the gaming market is aged 18 or older⁶³. Women now outnumber men (though only slightly) as the number of online-game players⁶⁴. Console games alone made over \$9 billion for the industry in 2004⁶⁵. The influence, and profitability, of gaming is on the rise.

⁶⁰ See the American Arbitration Website at <http://www.adr.org/sp.asp?id=21996>.

⁶¹ See the American Arbitration Website at <http://www.adr.org/sp.asp?id=21996>.

⁶² The American Arbitration Website at <http://www.adr.org/sp.asp?id=21996>.

⁶³ See Henry Jenkin’s article on the Public Broadcasting Services Website at <http://www.pbs.org/kcts/videogamerevolution/impact/myths.html>.

⁶⁴ See Henry Jenkin’s article on the Public Broadcasting Services Website at <http://www.pbs.org/kcts/videogamerevolution/impact/myths.html>.

⁶⁵ See Gamespot Website article posted 8-9-04 at http://www.gamespot.com/ps2/sports/maddennfl2005/news_6116499.html.

If people would see that games are not just toys or forms of escapism, but a legitimate form of expression that, if properly harnessed and understood, can be used to teach and educate people, then many more companies could be involved in the process. You never know, gamers may want to develop a game based on the court system. This idea is not a radical one. Many games made in Japan are based on the American political system, featuring characters such as “George Push” who are running for office, and they give people a chance to experience exactly what the an ordinary boring system like politics does and make it fun⁶⁶. AAA could take ADR to new heights, and new interests, by expanding themselves into the online gaming market.

Back in the day, video games were merely thought of as toys and creations for amusement. While games largely do exist to allow people to relax, this has changed considerably in the past 30 years. Tom Hall, one of the creators of the popular PC games *Commander Keen* and *Wolfenstein 3D*⁶⁷ liked computers and computer games because he could do multiple tasks with them and utilize his own artistic visions, such as creating alien languages and telling stories⁶⁸. During college, Hall created games for kids with learning disabilities, proud of their enjoyment of his games⁶⁹. Hall was convinced that games were equal to films and novels by their ability to communicate information⁷⁰. Hall is correct. Some researchers have called for games to be part of school curriculum⁷¹. Academics at London University’s Institute of Education claim that games can help

⁶⁶ See Nintendo Power, Vol. 36: Special Booklet, 1993.

⁶⁷ *Commander Keen* and *Wolfenstein 3D* were two of the biggest games of the early 1990s, designed by Tom Hall for id software.

⁶⁸ See David Kushner, *MASTERS OF DOOM: HOW TWO GUYS CREATED AN EMPIRE AND TRANSFORMED POP CULTURE* 42 (Random House 2003).

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ See Lucy Ward, *Computer Games “Can Help Children Learn”*, 10-27-2004, from the UK Guardian website at <http://education.guardian.co.uk/schools/story/0,5500,1336802,00.html>.

children learn concepts such as appreciation of narrative structure or character development⁷².

Hall was not alone. While games are still considered toys, many people make a living creating, designing, and programming video games. Regardless of the system of computer they are made for, the game continues to make lots of money and provide creative expression to designers, not to mention providing hours of entertainment across the world. Games have risen as a choice form of entertainment.

Some would say that American Arbitration Association would be taking a huge risk by throwing themselves into the online gaming world in this fashion. After all, the American Arbitration Association provides dispute resolution for real-life situations. The American Arbitration Association may view it as silly to penetrate such a market. However, the American Arbitration Association is missing vast untapped potential. Most online games do not feature a static set of dispute resolution rules. Other features that the American Arbitration Association provides, including neutral decision makers and boilerplate rules, are not present when players have disputes. Online game players have grievances like the next person. While one cannot give equal weight to online game disputes, players still have valid problems. Banning from a game often results in the complete loss of a character. In the alternative, a player can lose the money they paid to play the game. A player does not want to turn over their avatar's livelihood and their own money to a potential gamemaster who is not only confused over the dispute but may be potentially biased. Therefore, the following is a plan that would allow the American Arbitration Association to not only enter the online gaming world, but help many

⁷² *See id.*

companies, make money, assist players, and help people further understand ADR processes.

THE PROPOSAL: RESOLVING DISPUTES IN GAMES

This is not a suggestion for the American Arbitration Association to jump into the online gaming world. Creating a game from scratch can take years of work and millions of dollars to develop. I am suggesting that the American Arbitration Association do exactly what it does in real life: present itself as a neutral decision maker and ADR provider.

First, AAA will be required to educate itself on video games. Since the median age for most ADR providers is quite steep, it may require them to hire some newer members who are more inclined or accustomed to playing or understanding video games. Once that is in place, there should be little else to do except know the particular ins and outs of a game. Most games, like *The Sims Online*, feature worlds that are very similar to our own, so there would be little need to study up on the world⁷³. Other games, like *Everquest*, would require many hours of preparation time to understand the particular game mechanics and “justice” systems in the game⁷⁴.

AAA will then go to the online game company and see if they want to use their ADR services. Most companies may be quick to ignore the solicitation: after all, they have handled disputes on their own for years, and there would be no need to further complicate their own systems for resolving conflict by hiring a third-party provider. While this may be true for older games, newer companies may jump on the chance to

⁷³ It would be hard for any modern ADR provider to create ADR processes that would function in a fantasy, futuristic, or medieval setting, while modern games provide a normal environment.

⁷⁴ Besides that, many of these companies rarely will demand assistance because of the complexity of the game world and the cost to the company of adopting the AAA systems and procedures.

ease off their already heavy work load and allow someone else to resolve the disputes. As previously noted, many gamemasters are overworked⁷⁵. Others have a tendency to play favorites or they may lack a complete understanding of the rules. By hiring a service provider such as AAA, the online game companies would be entrusting the resolution of player disputes to trained professions who are being paid to provide neutral and competent service.

If the company accepts the offer from the American Arbitration Association, then AAA will work with the company to create a user agreement which spells out the rights of the parties and how a dispute will be settled. Most user agreements feature a multitude of terms, including the company's liability if the player violates the game rules, hacking or changing of the game code, spreading viruses or malicious scripts in the game, and what the player's rights are in the event of a dispute. These terms are very similar to the terms people put into a contract for determining when or what should be brought to an ADR process. Since most online gaming companies take an "all or nothing" approach to their disputes, AAA will most likely encompass all disputes in the gaming. After determining what disputes will be included in the agreement, it will be up to AAA to determine what a person's rights are and what those entail. Since this is an online gaming world, it would be more difficult to provide evidence than in a real-life hearing. However, these problems can be easily resolved by the offering of screenshots or chat

⁷⁵ Many gamemasters are lower-level employees or programmers that must split their time between keeping the game servers running and resolving grievances between players. Usually, keeping the servers running is more important.

logs by players, not to mention using utilizing eyewitness testimony from other players in the realms⁷⁶.

Once the rights are spelled out, it will be up to the company to determine what constitutes a fair hearing for a party and how they will be able to call a gamemaster to talk to them. In games such as *Ultima Online*, a player usually pages a gamemaster by pressing a button in the game interface and making a quick paragraph about what their dispute is. Depending on the severity of the charges/complaint and the backlog of previous complaints, the gamemaster will then “appear” in the form of an icon or character and help address the complaints of the player (SOURCE). This current system is flawed for several reasons: first, it often requires the gamemaster, often a worker on other parts of the game, to take time from their schedule and answer the complaint. Also, depending on what mood the gamemaster is in, a player may not even have their complaint addressed at a decent time.

By having dedicated AAA employees acting as dispute resolution gamemasters, they would be able to offer a guaranteed forum for players that have a grievance. This would help eliminate several problems with the system.

Of course, this system does have several flaws. As previously mentioned, the chances of an existing company paying an ADR provider to police their game are slim to none. Most companies would not find it cost efficient do this. Furthermore, many companies have tailor-made their user agreements and would not want to apply the rules of AAA, even if they can be contracted around in most instances. Furthermore, games

⁷⁶ I’ve been involved in a grievance myself. A player utilized a bug to break into my virtual house and steal items. I took screenshots of the event and saved my chatlog, an automated file that saves all text typed around your character and by your character in the game. I used this evidence to get the player banned from the game, though I never received my stuff back.

are unlike jobs, and most ADR processes are geared toward industrial peace and stability. A recreational game cannot be placed on the same footing as person's livelihood. Few online game companies would want to pay AAA to provide them services. Furthermore, AAA would not want to expend so much money and resources toward monitoring online videogames.

Therefore, while it can be an exciting way to give older gaming grievance procedures new life and stability, it is unlikely that online gaming companies and AAA would want to expend the resources necessary to fashion a uniform system of dispute resolution procedures into online gaming agreements. However, there still is potential with newer games being developed.

ADR AND MODERN GAMES: ADR VIDEO GAMES?

The vast majority of games mentioned above are games set in a medieval or fantasy setting, requiring players to team up and defeat a common evil with no real foothold in reality. While many of these games feature some type of mirror of the real world, the games take place in mythical lands or some very distant future. Various modern video games work differently: originally thought of as niche titles, these games are quickly becoming popular with people across the globe. One of the biggest successes has been *The Sims*⁷⁷.

The Sims put players in a unique position: they are in complete control of the world they inhabit. They create any type of character they want and have them act the way they want. In addition, various patches and hacks exist on the Internet allowing

⁷⁷ See the Wikipedia, a free online encyclopedia, at http://en.wikipedia.org/wiki/The_Sims for more information.

players to modify or further expand upon *The Sims* world⁷⁸. People have added their own textures to put in cartoon characters and movie stars, among other things. Scripts could be created that would allow players to create their own sense of “justice” in the game.

Modern Internet-based video games now facilitate market economies, politics, and elections⁷⁹. They are also thought to convey messages not just through exposition but through the experience of playing the actual game⁸⁰. However, problems exist in games that are now “run by players”: since people have a tendency not to take online games as seriously, they will often engage in dubious behavior online⁸¹. After all, how many people would pay and spend countless hours just to act normal when they already do that in real life? The answer may surprise you.

Many players, in fact, do enjoy some structure or rules in a game. While some view games to be a hedonistic form of activity, each online world has its own rules. Even games that are largely run by other players try and develop some sense of rules or structure for resolving disputes. Furthermore, while modern games generally need a type of “dispute resolution” structure to assist players with disputes, one market that is severely lacking exists in most types of games, including fantasy ones: regulation of the game economy. Many games lack some type of dispute mechanism to allow players to retrieve lost money or recover lost property.

In addition, many games are plagued with social issues. In *A Tale of the Desert* (SOURCE), female gamers were outraged when a trader in the game (sponsored by the

⁷⁸ Many games allow player to change the game data and add their own details, including different game textures, sounds, and new levels.

⁷⁹ See Kevin Parker, *Free Play: The Politics of the Video Game*, April 2004 from the Reasononline website at <http://www.reason.com/0404/fe.kp.free.shtml>.

⁸⁰ See Kevin Parker, *Free Play: The Politics of the Video Game*, April 2004 from the Reasononline website at <http://www.reason.com/0404/fe.kp.free.shtml>

⁸¹ Many players seem unaware of their own behavior online. The informality, the lack of real identification, and the anonymity seem to create a breed of player with no respect for anything.

game's creators) refused to sell items to characters because they were women⁸².

Furthermore, trying to resolve disputes is becoming a huge concern because some companies lack any form of dispute resolution⁸³. The biggest tension for the company is trying to provide a fun game where players honor their agreements yet realize it is just a game. Linden Lab, the creator of *Second Life*, has tried to find a third-party mediator to help resolve disputes since the amount of disputes they have to deal with jumps 20% each month⁸⁴.

One solution for all problems with companies lacking a third-party dispute resolution provider and any formal dispute resolution procedures would be to hire AAA to provide the services. However, as stated above, many companies would lack the money to utilize AAA's services in the virtual world, and AAA might not think of it as a successful venture. However, the best solution would be for the parties, in their user agreements, to adopt the AAA rules when fashioning dispute resolution.

Some of the core tenets the gaming companies would need to do would be to fashion their dispute resolution mechanisms with some type of "final" decision which cannot be appealed. While many decisions are, in fact, final, people often sue because the finality of the decision is not written in the user agreement⁸⁵. If companies could offer dispute resolution mechanisms tailored to fit the needs of their game, and even couple it with in-game mechanics (i.e. creating an in-game courthouse where neutral judges, trained players/game creators will neutrally hear evidence/see screenshots/view

⁸² See Grimwell Online article, reprint of Tammy O'Sullivan article written 10-20-04, at <http://www.grimwell.com/index.php?action=fullnews&id=192>.

⁸³ See Daniel Terdiman, *Online Feuds a Big Headache*, from Wired Magazine Online written 11-3-04 at <http://www.wired.com/news/games/0,2101,65562,00.html?tw=rss.GAM>.

⁸⁴ See Grimwell Online article, reprint of Tammy O'Sullivan article written 10-20-04, at <http://www.grimwell.com/index.php?action=fullnews&id=192>.

⁸⁵ Many user agreements are not fully written out and contain loopholes.

chatlogs/listen to player witnesses and offer a final and binding solution), then this important tool will not only be present to assist players in the resolution of disputes, but it can also be a fun way to introduce the topic and get players interested. Certain players, if they can demonstrate their impartiality and understanding of the disputes, could be in-game judges, and if they breach that trust or violate the rules, they can lose their positions. It would also encourage other players to play by the rules if they knew that their scams and abuse of people's trust would not go unpunished.

CONCLUSION

AAA, while it may not be able to implement the rules itself nor actually monitor online gaming worlds, can work with online gaming companies for nominal fees to structure a dispute resolution system that will add stability and assurance to player disputes in these worlds. By adding dispute resolution to online games, gamers will have forums to vent their grievances and gain justice. Game companies will finally have mechanisms in place to take the work load off their staff and potentially create a fun new system in games. AAA will gain exposure from their expansion into online worlds and can make substantial money for initial consultation fees for helping companies craft agreements. Everyone can be a winner.

Time will be the ultimate judge of this proposal, but as a type this, experts from New York Law School are readying for State of Play III, the third conference about virtual worlds, potential use of dispute resolution in these worlds, and other online gaming issues⁸⁶. You just never know...maybe this proposal will be adopted.

⁸⁶ Information about the conference can be obtained at <http://www.nyls.edu/pages/2396.asp>.