The shadows within

Not long ago, on 4 and 5 April 2019, the fifth annual More Than Just A Game (MTJG) conference took place in London, UK organized by the Centre for Commercial Law Studies (CCLS), School of Law, Queen Mary University of London.¹ MTJG is the place where academics (of legal and non-legal persuasions), lawyers and law students go to reflect seriously on the state of interactive entertainment and video games in a legal context. This year's conference had as its main theme 'The role of games and interactive entertainment in society' and addressed a very broad set of themes, as well as many detailed subjects within those themes. Yet, those fortunate enough to be present might have observed that all of the meticulously planned themes, sub-themes, subjects, and sessions bowed in the end to a monumental force that lay just below the surface of every discussion over the course of two days. Even more astonishingly, beyond the sheer pervasiveness of this mostly subterranean visitor, was how it was variously characterized alternately as superhero and supervillain. Moreover, it was not like any of us had never heard of this demon (or angel). In fact, almost all of us are well used to its projected shadow, its long reach, and its occasionally very sharp teeth.

Before us in full view, without excuses, apologies or equivocations, in full battle dress, stood the specter, nay threat, nay promise, of regulation of the video game industry, of gamers, of devices, and of the means of how games are delivered.

Virtually every panel discussion at MTJG, no matter where it was intended to lead, inevitably made its way to the question of game industry regulation. No longer were we debating how games can get swept up inadvertently by the sometimes mindless broom of legislators trying to solve some other problem in another entertainment sector for some other people. Rather we were suddenly talking, because we had to, about the direct regulation of games, those who make them, those who deliver them, and those who play them. Suddenly the gloves were off and,

welcome or not, the battle was unavoidable. The real problem as we kept finding out again and again was that the enemy was not so much coming to us for battle, as the enemy was coming from within us like that awful scene in Ridley Scott's 1979 science fiction film 'Alien' where the namesake of the film emerges from the chest of Executive Office Kane (played by John Hurt).²

Equally eerily, we probably all knew or at least suspected that we were among dangerous alien eggs not indigenous to the natural creativity and fun of video games:

- Loot boxes implicating the vice and potential illegalities of gambling.³
- Game mechanics of continuous engagement rewarding compulsiveness and easily mistaken for or assumed to be addictive.⁴

All of which goes back to our original Achilles heel – children play with us, and sadly as happens far too often in the above examples, we play with children.⁵

On top of all the shadows of regulation emanating from the above examples, who could ever have dreamt that the purest form of gaming, interactive storytelling, would, or even could, be co-opted by Netflix or YouTube as the internet's next big thing.⁶ Perhaps we could even get our collective head around the question of whether to regulate video games in the context of our natural video game habitat. However, adding gross insult to already sustained injury is the fact that that we are certainly 'not in Kansas anymore' with the CEO of Facebook quite literally asking for regulation of the internet (with particulars that would in almost every material way include video games).⁷ Perhaps it is too much to even mention the publication by the UK House of Lords of 'Regulating in a digital world' on 9 March 2019.⁸ Maybe next time Master Zuckerberg, don't be so quick to throw everyone under the bus that maybe only your company should be run over by.

There is ample irony that video games' decades-long battle with one cause of perdition appears to have ended.

1 <https://www.mtjg.co.uk/mtjg-v>.

2 <https://www.imdb.com/title/tt0078748/>.

3 'Loot boxes: An industry at war with itself over a technicality – 2018 in Review: The evidence says loot boxes are gambling, but the law is still catching up', <https://www.gamesindustry.biz/articles/2018-12-12-loot-boxes-a-year-in-review>.

4 'Parliament launches "addictive" technologies inquiry', <https://www.gamesindustry.biz/articles/2018-12-11-inquiry-into-immersive-and-addictive-technologies-launched-by-uk-government>.

5 'German regulator warns Outfit 7 and Green Tea Games over in-app purchases: Consumer protection body concerned by how studios are targeting minors with microtransactions priced at up to €109.99',

<https://www.gamesindustry.biz/articles/2018-10-11-german-government-warns-outfit-7-and-green-tea-games-over-in-app-purchases>.

6 'Netflix's Bandersnatch UX: Cinema meets Gaming, how to make the marriage last!', https://www.gamasutra.com/blogs/OmTandon/20190109/333860/Netflixs_Bandersnatch_UX_Cinema_meets_Gaming_how_to_make_the_marriage_last.php.

7 'Mark Zuckerberg: The Internet needs new rules. Let's start in these four areas', https://www.washingtonpost.com/opinions/mark-zuckerberg-the-internet-needs-new-rules-lets-start-in-these-four-areas/2019/03/29/9e6f0504-521a-11e9-a3f7-78b7525a8d5f_story.html?utm_term=.6efa599b403a.

8 <https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/29902.htm>.

We finally have ample reason to believe (what we felt all along), that video game violence doesn't make kids or adults more violent.⁹ Any well-deserved respite on that score is proving to be momentary at best. Suddenly, interactive entertainment isn't making the news much because of fun or fear. We are in the news and seemingly destined for regulation because of usually someone else's sheer power (which we have mostly chosen not to clearly disavow) to impact the mortal soul through attractions and engagements fueled and reinforced through data consumers rarely see or understand, parsed by deep learning artificial intelligence in service to the shadow forms of addiction, compulsion and existential meaninglessness.

We all put on a brave face as if we could control the game, when it has become plain for everyone to see that the game was in control of us (at least while share prices grew) ...

So it is that in this issue of I.E.L.R., regulation rules the pages that follow. We begin with Chris Dent tackling the beast head on in 'Regulating interactive "creativity for the bad": camgirls, video games and fake news', continuing into the topical 'Restrictions on freedom of expression in the video games industry in Russia' by Alexander Abyshko, Maria Mironova, Alfia Mutygullina, Ivan

Ponomarev, German Sabirov and Anastasiya Chuvaeva. Thereafter we transition into the collisions between GDPR regulation and blockchain technology with Anne Rose as our guide in 'GDPR challenges for blockchain technology'. Andrea Rizzi, Nicoletta Serao and Liam Nowak then ask the hard questions that lead to regulation in 'Esports in Italy: an industry ready to take off (or still in search of its regulatory soul)?' Finally, the capacity of trademark law to control plain old fun is at issue in Makoto Shimada's piece 'Nintendo v. MariCar: is street kart rental business free riding on the popular video game characters prohibited in Japan?'

The word 'regulate' has as its dark side the meaninglessness of everything being 'made regular'. Fun is never regular, and the apotheosis of video games is unadulterated fun. We hope that you find this issue of I.E.L.R. to be fun in its own unique way. Even more, we hope that the interactive entertainment industry finds the strength, strategies, resilience and coordination to do the things it can to remain fun and avoid being regular.

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Professor Jon Festinger, Q.C.
Dr. Marc Mimler

⁹ 'New study shows violent video games do not make teens more aggressive', <https://medicalxpress.com/news/2019-02-violent-video-games-teens-aggressive.html>.