Precise imprecisions

During the past year we have witnessed an ever increasing number of streamed, televised and written discussions respecting fundamental legal and regulatory issues involving games and interactive entertainment. These events were led by Politicians and public relations (P.R.) practitioners and often appear to offend both facts as well as technical details. With a particular penchant for word games, mind games, allusions and forced metaphors, these supposedly strategic emanations result in the clear impression that issues are only superficially understood, that something entirely different in meaning was actually intended, or that what is being declared is nothing more than superficial posturing for posterity. Let us call these intellectually empty modalities 'precise imprecision' and let us further resolve to oppose them. As sworn officers of the court committed to the rule of law, of necessity we lawyers have both different obligations and a higher standard to adhere to. As academics we must be intellectually honest in judging whether the debates are supported and informed by appropriate and independent research. We also have to ensure that research is not misquoted or creatively interpreted.

During many of the policy debates prevailing in today's political, social and cultural climate, 'precise imprecision' is often utilized in concert with pure ambiguity to create a mind-numbing broth of confusion and stupor attributable almost wholly to intentional and calculated obfuscation. The strategy seems intended so that the speaker always has a place to retreat to or attack from depending on the dragons, real or imagined, being faced ...

All these rhetorical gyrations might all seem eerily familiar as the interactive entertainment industry collectively contemplates the place of regulation in video games.

One possible interpretation of what went wrong for the video game industry around violence, addiction, loot boxes and legal regulation is that those issues were treated as part P.R. problem/part political problem. What they didn't seem to be, was actually exactly what they really are – a legal problem. Perhaps most urgently needed on the battleground would have been a real, thoughtful and detailed legal strategy. Plain and simple. Moreover, it is now clear that where regulation is contemplated, everyone involved needs to be a good deal more serious when it comes to the dialogue. Nay, a good deal more serious when it comes to the words being used. In particular, precision will have to be just that. Precisely so that governmental action deals with the real problem and nothing

more, because dealing with more could be contrary to the rule of law.

So, who is best at parsing words with real, and not make-believe precision? Yes indeed. Lawyers. Moreover, preferably lawyers acting as lawyers, doing what we were trained to – not in some other more vague personification that is not practicing law.

The truth is that video games are earthly wares that have always been subject to the vicissitudes of laws, local, regional, national and international depending on a significant number of individualized factors. The mythology that video games were immaculately conceived by virginal teen developers and birthed in a manger-like garage while the wise persons of the Silicon Valley visited occasionally and the brand new star of digital freedom ascended overhead needs to be dispensed with. The sooner the better actually, if the video game eco-system's current major players are not to be disrupted and displaced more precipitously than they deserve. Video games were always regulated in ways too numerous to count depending on time, place, content and success, and were as heavily legally regulated as anything else. Pretending the bridge to regulation was not crossed long ago whether through securities regulation of game companies that are publicly traded, or language and labelling laws in every jurisdiction where games are distributed, or in the thousand other ways laws clearly apply, is simply disingenuous. Begging the question of why the apparent lack of willingness to deal with the spectres of regulation and how unexpected the interactive entertainment industry has seemed to find these not new developments.

We would suggest that the industry's seemingly being caught unaware of the weightiness of the issues would appear to be due to a lack of direct lawyerly involvement. Because the legalistic genie may not be easily put back in the bottle, it is probably now urgent that the industry figure out how to change its pose and perception from that of the proverbial deer in headlights to something slightly more flattering.

All leading to a final question ... are there helpful solutions beyond the current crisis? Not only are those solutions present, they already exist and are working rather well. Today in-house counsel and video game lawyers constantly have to untangle layer after layer of un-harmonized legislation and regulations to have the industry's products and services reach global audiences. Mostly, those mechanisms of legal oversight are tone-deaf to video games, as they are rarely designed or implemented with interactive entertainment in mind. The nature and scope of the game

industry's everyday legal constraints are very wide-ranging, applying to the parameters of cloud gaming, competition and antitrust law, DSM directive implementation, unionization, age verification and data protection. Adding the issue of immersive 'addictive' technologies to the lawyer's task list since we are the principled purveyors of the rule of law, and moving those away from the misguided rhetoric, bombast and slick talking points of clueless PR spokespeople, well intentioned but naive game designers, and one-trick pony financial market experts might not just be an idea, but an idea whose time has long come ...

Accordingly, it is appropriate that this issue showcases the sometimes surprising scope of legal intercession in interactive entertainment. We start with 'Mere play or authorial creation? Assessing copyright and ownership of in-game player creations (Part 1)' by Anthony Michael Catton, an article particularly illuminating regarding the boundaries of legal rights and intervention. In a somewhat similar vein, Keri Grieman's 'Lakitu's

world: proactive and reactive regulation in video games' examines not whether regulation, but its different forms and modalities. In 'Cheat software – "doping" in online games', Dr. Andreas Lober and Timo Conraths examine an area of historical concern and legal activity in games – cheating software with software. Thereafter, Felix Hilgert works through the legalisms of 'Withdrawal right waivers for in-game currency under EU law'. Finally, we end this issue fully dedicated to what lawyers uniquely do, with Scott M. Kelly and Alex Nealon's '*Game and Technology Co. v. Activision Blizzard* – a look at how *inter partes* reviews change the game in patent suits'.

My Lords and Ladies, we propose that lawyers are uniquely skilled and offer this issue as evidence.

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