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# **ONLINE GAMING AND THE PAY-TO-WIN PROBLEM: LEGAL DETERRENCE OR INDUSTRY SELF-REGULATION?**

SIMONE DARAKJIAN\*

Online games that started off as games of luck, skill and patience have been transformed into pay-to-win games. Players with the deepest of pockets, who can purchase any in-game asset that would advance their gameplay, win. The game is no longer a game. It is being destroyed by the exploitation of commercial opportunities and the black market sale of in-game assets. It is turning into a business, pure and simple, and is depriving dedicated, skillful, and patient players of their expected in-game experience. Moreover, players are regularly discovering and exploiting new alleys through which to engage in these Real Money Trading (“RMT”) transactions to avoid any transaction costs.

A number of scholars have addressed the initial question of whether income is generated when in-game assets or currency are acquired. This Note addresses the more recent development of the extensive trading of these acquired assets or currency. Specifically, this Note addresses the consequences of large scale acquisition of in-game assets and currency as a business, and not as the byproduct of recreational activity. In doing so, this note addresses possible solutions through state regulation, taxation, and industry self-regulation. As the majority of RMT transactions occur between foreign and US players, these transactions are taxable in very limited circumstances. Therefore, this Note concludes that the most plausible way to deter gold farming and RMT transactions may actually be through industry self-regulation and not through legal means.

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\*J.D. candidate at Loyola Law School, Los Angeles, 2017. This Note is dedicated to Arthur Hovsepien, whose love, patience, support, and PC gaming hobby made this Note a possibility. Thank you for being my rock for the past ten years of my life. My utmost thanks to Professor Katherine Pratt for not only agreeing to be my faculty advisor for this Note, but also for her unending support and guidance; to my parents for their unconditional love and support throughout my entire life; and to Patil Derderian for her invaluable friendship.

## I. INTRODUCTION

Online gaming initially invokes images of teenage boys, ensconced in their computer chairs, hunched over a keyboard playing games. The reality today, however, is that the acquisition and production of saleable assets acquired through online games has become a huge international profitmaking activity.<sup>1</sup> Throughout China, workers in single rooms toil away in a clockwork fashion reminiscent of factory workers, trying to generate in-game currency and assets that are then sold to U.S. players.<sup>2</sup>

This practice, known as “gold farming,” along with various other services offered by Chinese workers, is destroying online games. Online games started off as games of luck, skill, and patience. Now, they have transformed into games akin to free-to-download iTunes or Google Play games that drown players in in-app purchases.<sup>3</sup> As such, online games have been transformed into “pay-to-win” games. Players with the deepest pockets, who can afford to utilize the services of Chinese gold farmers, purchase in-game assets to advance their gameplay. The online gaming industry has become a business, pure and simple. The exploitation of commercial opportunities and the black market sale of in-game assets are depriving dedicated, skillful, and patient players of their expected in-game experience, and destroying the gaming environment.

Many online gamers engage in a practice known as Real Money Trading (“RMT”), which allows them to purchase in-game items and currency to advance their in-game characters. Some games, such as *Second Life*,<sup>4</sup> allow and encourage players to engage in RMT.<sup>5</sup> Others,

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1. See Nathan Gibson, *10 of the Most Expensive Virtual Items in Video Games*, *THE RICHEST* (Nov. 15, 2014), <http://www.therichest.com/rich-list/most-popular/10-of-the-most-expensive-virtual-items-in-video-games/?view=all> [<http://perma.cc/YW3D-G29B>] (topping the list was an asteroid space resort in the sci-fi MMORPG *Entropia Universe*, which was sold piecemeal for a total of US \$635,000).

2. See Julian Dibbell, *The Life of the Chinese Gold Farmer*, *N.Y. TIMES* (June 17, 2007), <http://www.nytimes.com/2007/06/17/magazine/17lootfarmers-t.html> [<http://perma.cc/AE95-ELUW>] (describing the typical 12-hour work shift of a Chinese gold farmer, who earns an effective wage of about 30 cents an hour).

3. See *About In-app Purchases*, *APPLE*, <http://support.apple.com/en-us/HT202023> [<http://perma.cc/YKD3-MZCJ>] (“In-app purchases are extra content and subscriptions that you can buy in apps on your iOS device or computer.”); see also *Buy In-app Items*, *GOOGLE*, <http://support.google.com/googleplay/answer/1061913?hl=en> [<http://perma.cc/6EMS-YME9>] (“Here are some examples of in-app purchases: a sword that gives you more power in a game, a key that unlocks more features of a free app, virtual currency that can be used for purchases.”).

4. See *What Is Second Life?*, *SECOND LIFE*, <http://secondlife.com/whatis/>

such as World of Warcraft (“WoW”) and Diablo III,<sup>6</sup> consider any form of RMT as a direct violation of their terms of service and their virtual “property” rights.<sup>7</sup> Regardless, about 24% of players in the U.S. and around the world still engage in unauthorized RMT on a daily basis.<sup>8</sup> As such, assuming the U.S. has jurisdiction to tax parties engaging in RMT, these income-generating transactions give way to taxable income, which the Internal Revenue Service (“IRS”) has been unable to monitor or collect.<sup>9</sup> Furthermore, game developers have been unable, or perhaps unwilling, to deter these transactions themselves.<sup>10</sup>

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[<http://perma.cc/J4H5-HCKM>] (describing itself as “the largest-ever 3D virtual world created by [millions of] users” where “everyone you see is a real person and every place you visit is built by people just like you”).

5. See Brett Linden, *Buying and Selling Linden Dollars*, SECOND LIFE (Oct. 15, 2015, 3:38 PM) <http://community.secondlife.com/t5/English-Knowledge-Base/Buying-and-selling-Linden-dollars/ta-p/700107> [<http://perma.cc/CRN4-5LHZ>] (“The unit of trade in Second Life is called the Linden dollar or L\$. You can purchase Linden dollars both inworld and online . . .”).

6. See *Diablo III: Introduction*, BATTLE.NET, <http://us.battle.net/d3/en/game/guide/get-started/introduction> [<http://perma.cc/E2K3-VU26>] (“Diablo III is an *action role-playing* game that takes place throughout the dark fantasy world of Sanctuary. You play a hero who engages in fast-paced combat that tests your reflexes and rewards tactical decisions. As you slay hordes of monsters and challenging bosses, you grow in experience and ability, learning new skills and acquiring items of incredible power.”).

7. See *Battle.net End User License Agreement*, BLIZZARD (Feb. 28, 2015), <http://us.blizzard.com/en-us/company/legal/eula.html> [<http://perma.cc/9SLU-76K5>] [hereinafter *Battle.net EULA*] (“Prohibited Commercial Uses . . . [include] gathering in-game currency, items, or resources for sale outside of Battle.net or the Game(s) . . . [and] performing in-game services, like power-leveling, in exchange for payment outside of Battle.net or the Game(s) . . . Blizzard is the owner or licensee of all right, title, and interest in and to the Battle.net Client, Battle.net, the Games, Accounts, and all of the features and components thereof. Battle.net and the Games may contain materials licensed by third-parties to Blizzard, and these third-parties may enforce their ownership rights against you in the event that you violate this Agreement.”).

8. See Vili Lehdonvirta & Mirko Ernkqvist, *Knowledge Map of the Virtual Economy: Converting the Virtual Economy into Development Potential*, INFODEV 13 (Apr. 2011), [http://www.infodev.org/infodev-files/resource/InfodevDocuments\\_1056.pdf](http://www.infodev.org/infodev-files/resource/InfodevDocuments_1056.pdf) [<http://perma.cc/5X8V-FRVU>].

9. See Anne Livesay, *Will Gold Farming Become Taxable?*, IRON REALMS ENTM’T, <http://www.ironrealms.com/will-gold-farming-be-taxed> [<http://perma.cc/6D8E-Q257>].

10. See generally *Thread: Why Can’t Blizzard Just Systematically Shut Down All the Gold Selling Sites?*, MMO CHAMPION, <http://www.mmo-champion.com/threads/1191871-Why-can-t-Blizzard-just-systematically-shut-down-all-the-gold-selling-sites/page3> [<http://perma.cc/H9WK-KV8U>] (discussing potential reasons for why Blizzard Entertainment, a premier game developer, has not reacted toward the RMT phenomenon).

In these virtual worlds, players are able to acquire in-game currency and limited use in-game property.<sup>11</sup> Players create in-game assets by developing in-game characters and player accounts.<sup>12</sup> Although RMT seems to be an ever-growing occurrence, the IRS has yet to clearly respond to its tax implications.<sup>13</sup> Game developers, while aware of the issue, do little to hinder its occurrence.<sup>14</sup> Moreover, players regularly discover and exploit new alleys to engage in RMT transactions to avoid transaction costs, such as through the use of PayPal's gifting system.<sup>15</sup>

There have been varying proposals on how to address this gray area of RMT in the U.S. tax code, but none provide complete solutions to the problem.<sup>16</sup> Furthermore, scholars have addressed the initial question of whether in-game assets or currency generate income at the time they are acquired.<sup>17</sup> This Note addresses the more recent development of the

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11. Limited in the sense that a player is only able to utilize these items within the game.

12. See, e.g., *Diablo III: Introduction*, *supra* note 6 (“As you slay hordes of monsters and challenging bosses, you grow in experience and ability, learning new skills and acquiring items of incredible power.”).

13. Jamie S. Switzer & Ralph V. Switzer, *Taxation of Virtual World Economies: A Review of the Current Status*, 7 J. VIRTUAL WORLDS RES. 1, 1 (2014) (“[T]he Internal Revenue Service has to date not offered any strong guidance regarding the issue [of virtual world economies].”).

14. See *Thread: Why Can't Blizzard Just Systematically Shut Down All the Gold Selling Sites?*, *supra* note 10.

15. See, e.g., Josh, *Warning! Do Not Sell Gold Via PayPal!*, BATTLE.NET (July 21, 2012, 1:01 AM), <http://us.battle.net/d3/en/forum/topic/6146725790> [<http://perma.cc/BD67-32BE>] (warning players of his experience selling WoW gold using PayPal's gifting system to avoid transaction costs and violating Blizzard's and PayPal's EULA); see also *Send and Transfer Money at the Speed of Life*, PAYPAL, <http://www.paypal.com/us/webapps/mpp/send-money-online> [<http://perma.cc/SRB5-6V7H>] (“Send money to just about anyone using their PayPal email address or mobile number and the money will go to their PayPal account.”).

16. See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-516, VIRTUAL ECONOMIES AND CURRENCIES: ADDITIONAL IRS GUIDANCE COULD REDUCE TAX COMPLIANCE RISK 17 (2013), <http://www.gao.gov/assets/660/654620.pdf> [<http://perma.cc/W5VU-WJJT>] (recommending that the IRS “find relatively low-cost ways to provide information” to taxpayers on the basic tax reporting requirements for virtual currencies).

17. See, e.g., Bryan T. Camp, *The Play's the Thing: A Theory of Taxing Virtual Worlds*, 59 HASTINGS L.J. 1 (2007) (exploring at what point economic gain becomes taxable gain and arguing for a “cash out” rule for determining gross income); Leandra Lederman, “*Stranger Than Fiction*”: *Taxing Virtual Worlds*, 82 N.Y.U. L. REV. 1620 (2007) (same).

extensive trading of these acquired assets or currency. Specifically, this Note addresses the consequences of the large-scale acquisition of in-game assets and currency as a business, as opposed to the byproduct of a recreational activity.

Part II of this Note presents and explains the concept of virtual worlds, virtual currency systems in online gaming, and RMT. Part III discusses previously proposed taxation solutions to RMT-generated income. Part IV presents new possible solutions to the lack of deterrence of RMT. More specifically, the discussion breaks down three different solutions: (1) state regulation, (2) foreign and U.S. taxation, and (3) industry self-regulation. Part IV begins by analyzing the monitoring and compliance issues that state regulation may face. Next, it concludes that, because the majority of RMT transactions occur between foreign and U.S. players, these transactions are taxable in limited circumstances. Finally, Part V asserts that the most plausible way to deter gold farming and RMT transactions may actually be through non-legal means: industry self-regulation.

## II. VIRTUAL WORLDS AND RMT

### A. *Virtual Worlds*

#### 1. MMORPGs

With its launch in 1993, Doom paved the way for our current online personal computer (“PC”) gaming environment.<sup>18</sup> For the first time, players were able to participate beyond just one PC by setting up Local Area Networks (“LANs”) to play in multiplayer mode with their friends.<sup>19</sup> Multiplayer PC gaming became a huge hit—people would gather, with their PCs in tow, and have LAN parties.<sup>20</sup> Later on, with the emergence of online games such as WoW, players were no longer required to connect to

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18. See *20 Games That Changed Gaming Forever*, PCWORLD (June 24, 2009), [http://www.peworld.com/article/167229/20\\_games\\_that\\_changed\\_gaming\\_forever.html#slide21](http://www.peworld.com/article/167229/20_games_that_changed_gaming_forever.html#slide21) [<http://perma.cc/HK2A-LTJE>] (“Doom was the wellspring that shaped the industry.”).

19. See *How Can I Host a LAN Party?*, WISEGEEK, <http://www.wisegeek.com/how-can-i-host-a-lan-party.htm> [<http://perma.cc/JTY9-SUVJ>].

20. See *id.* (“Party goers are linked by a LAN, or local area network, and play the same computer game, either cooperatively or competitively. . . . As gamers learned the fun of fragging friends when they are within screaming distance, LAN parties became more popular.”).

the same LAN to play in multiplayer mode.<sup>21</sup> These games, referred to as Massively Multiplayer Online Role-Playing Games (“MMORPGs”),<sup>22</sup> transformed small LAN parties into “realms,” where hundreds of thousands of players throughout the world are able to play and interact with one another over the internet.<sup>23</sup>

There are three general types of players in MMORPGs: casual gamers, hardcore gamers, and for-profit gamers.<sup>24</sup> The most common type of the three, casual gamers, play MMORPGs in their free time, taking the time to enjoy the gameplay.<sup>25</sup> Hardcore gamers, on the other hand, play as often as they can, likely for hours a day.<sup>26</sup> These gamers are the most likely to do anything and everything they can to advance their position in the game.<sup>27</sup> For-profit gamers treat these PC games as a business and play them purely for profit-making purposes.<sup>28</sup>

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21. See *What is World of Warcraft*, BATTLE.NET, <http://us.battle.net/wow/en/game/guide/> [<http://perma.cc/RS69-HK45>] (“World of Warcraft is an online game where players from around the world assume the roles of heroic fantasy characters and explore a virtual world full of mystery, magic, and endless adventure.”).

22. *MMORPG*, DICTIONARY.COM, <http://dictionary.reference.com/browse/mmorpg> [<http://perma.cc/7H4Z-FG9N>] (“[M]assively multiplayer online role-playing game: any story-driven online video game in which a player, taking on the persona of a character in a virtual or fantasy world, interacts with a large number of other players.”).

23. See *Chapter I: Getting Started*, BATTLE.NET, <http://us.battle.net/wow/en/game/guide/getting-started> [<http://perma.cc/7A58-UHR7>] (showing that not only are players in the United States able to communicate with other U.S. players, they are also now able to communicate with players from around the world); see also *Realm*, WOWWIKI, <http://wowwiki.wikia.com/wiki/Realm> [<http://perma.cc/JKC7-7D33>] (describing how game developers host realms on physical “servers” located across the globe (e.g., the US, Australia, Europe, China, Brazil, and Korea)).

24. See Byron M. Huang, *Walking the Thirteenth Floor: The Taxation of Virtual Economies*, 17 YALE J.L. & TECH. 224, 234 (2015).

25. See *id.* at 234–36. The following discussion of hardcore and casual gamers differs from Mr. Huang’s in that this Note asserts that hardcore gamers are more likely than casual gamers to engage in RMT and purchase in-game items. Casual players play the game simply for enjoyment sake and are not as concerned about winning compared to hardcore gamers. Therefore, this Note assumes that because hardcore gamers are more dedicated to being the best at the game, they are more likely than casual players to purchase in-game items to progress more quickly in the game.

26. See *id.*

27. See *id.*

28. See *id.* at 235; see also, *How To Make Money Selling Virtual Gold as a WoW Gold*

In MMORPGs, players create an account, usually tied to an email address, and are then able to choose and name their character(s) as whom they will play.<sup>29</sup> For example, Jane, a casual player, signs up for WoW and selects a realm she wishes to play in based on her time zone.<sup>30</sup> Only players from the same realm are able to interact with one another, so she must make sure she is playing in the same realm as her friends.<sup>31</sup> She is now able to choose her character's race and class.<sup>32</sup> As there are two opposing "factions," Horde and Alliance, Jane must choose a race in the faction she wishes to join.<sup>33</sup> Jane's friends are in the Alliance, so Jane chooses a female Night Elf—one of the Alliance races—to be able to play with her friends as a team.<sup>34</sup> Next, Jane must choose a class to determine her Night Elf's abilities.<sup>35</sup> Of the nine classes available to Night Elf

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*Farmer*, MONEYPANTRY (May 25, 2015), <http://moneypantry.com/make-money-selling-virtual-gold/> [<http://perma.cc/K485-585S>].

29. Some players have multiple characters on an account, which requires more time and effort, to build each character up to their full potential. Furthermore, some players have multiple accounts, on different email addresses. See *Create a Free Account*, BATTLE.NET, <http://us.battle.net/account/en/creation/tos.html> [<http://perma.cc/S6LE-2AG7>].

30. See *Chapter I: Getting Started*, *supra* note 23; see also *Realm*, *supra* note 23 ("A realm is an instance of the World of Warcraft game. Realms are hosted on physical devices called servers. To play, you must first choose a server (realm) to play on. You then connect to this realm over the internet.").

31. See *Chapter I: Getting Started*, *supra* note 23.

32. See *id.* Some examples of races are: Night Elf, Gnome, Human, and Dwarf. Some examples of classes are: Warrior, Hunter, Rogue, and Warlock. Each race and class has specific attributes. Players can decide which race and class appeals to them the most in their selection process. For example, a priest would be an ideal character to be a healer. Healers help heal their friends and themselves if they take damage during monster fights.

33. See *What Is World of Warcraft*, *supra* note 21; see also *Races*, BATTLE.NET, <http://us.battle.net/wow/en/game/race/> [<http://perma.cc/R2BF-GW7G>] (showing that the Horde races tend to be "darker" creatures such as Goblins, Orcs, and the Undead).

34. Players are likely to choose a faction based on whether or not they already know other players in that faction. As WoW and other similar games require players to form groups to complete certain tasks, it is easier for players to go into the game knowing they already have a group rather than hoping they are able to befriend other players in-game. See *Honor\_Bound, Why Are YOU Alliance or Horde?*, REDDIT, [http://www.reddit.com/r/wow/comments/2l3gnk/why\\_are\\_you\\_alliance\\_or\\_horde/](http://www.reddit.com/r/wow/comments/2l3gnk/why_are_you_alliance_or_horde/) [<http://perma.cc/BF4V-P8Q9>].

35. See *Chapter I: Getting Started*, *supra* note 23.

players, Jane chooses to be a hunter<sup>36</sup> and begins her adventure with low-level weapons and armor.

Throughout the game, Jane will use her skills and abilities to perform and complete quests to unlock even more skills and abilities.<sup>37</sup> Furthermore, completing these tasks will build her character's endurance. This will allow Jane to participate in more challenging tasks that bear higher-level prizes, such as more powerful weapons and durable armor, otherwise known as "loot."<sup>38</sup> The more time and effort Jane puts into the game, the stronger and more durable her character becomes, which gives her more chances to collect better equipment and acquire new skills.<sup>39</sup>

Often, Jane will need to perform in-game tasks with her friends to collect the best weapons and armor.<sup>40</sup> Jane and up to four of her friends will venture into dungeons, where monsters become much more difficult to kill than those Jane encounters during her solo quests.<sup>41</sup> Moreover, these monsters drop higher quality loot.<sup>42</sup> To collect even better loot and level up her character more quickly, Jane must also participate in raid groups that consist of ten or twenty-five players depending on the difficulty of the raid.<sup>43</sup> These raids, at times, take hours or even days to complete.<sup>44</sup> As such, raiding in WoW also produces the best in-game items.<sup>45</sup>

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36. See *Races of World of Warcraft: Night Elf*, BATTLE.NET, <http://us.battle.net/wow/en/game/race/night-elf> [<http://perma.cc/L3Z3-QD93>].

37. See *Chapter II: How to Play*, BATTLE.NET, <http://us.battle.net/wow/en/game/guide/how-to-play> [<http://perma.cc/6L4Y-KQ92>].

38. See *id.*

39. See *id.*

40. See *id.*

41. See *What Is World of Warcraft*, *supra* note 21.

42. See *id.*

43. See *id.*

44. See Yarini, *Which Raid Lasted the Longest?*, REDDIT, [http://www.reddit.com/r/wow/comments/2wp5tc/which\\_raid\\_lasted\\_the\\_longest/](http://www.reddit.com/r/wow/comments/2wp5tc/which_raid_lasted_the_longest/) [<http://perma.cc/MN5V-ZNWD>] (compiling data on the length of time it took to complete certain raids).

45. See *What Is World of Warcraft*, *supra* note 21.

## 2. ARPGs

Unlike MMORPGs, Action Role Playing Games (“ARPGs”) are usually single-player games.<sup>46</sup> As such, *Diablo III*, an ARPG, does not have factions like *WoW*.<sup>47</sup> ARPGs ask players to choose a class, such as a Wizard or Monk.<sup>48</sup> Even so, some games allow players to also form and play in small groups.<sup>49</sup> For example, similar to dungeons in *WoW*, *Diablo III* players can join up to three additional players to complete in-game quests.<sup>50</sup> They can either join a “Public Game” with strangers or create their own groups with people from their “Friends List.”<sup>51</sup> While in a group, players may chat and trade items with one another.<sup>52</sup> Loot, which includes both in-game items and currency, is earned by killing monsters.<sup>53</sup> Loot earned while playing in groups is separated for each individual player, possibly to prevent each player from “stealing” items from the other players in the group.<sup>54</sup> Players are then able to trade items that their characters perhaps cannot use, or already have, with any member of their group.<sup>55</sup>

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46. See *A Brief History of Western Action RPGs*, *HARDCORE GAMING* 101 (May 27, 2011), <http://blog.hardcoregaming101.net/2011/05/brief-history-of-western-action-rpgs.html> [<http://perma.cc/J58L-WJHT>].

47. See *id.*

48. See *What is Diablo III?*, *BATTLE.NET*, <http://us.battle.net/d3/en/game/what-is> [<http://perma.cc/HR67-KLHR>].

49. See *Playing with Friends*, *BATTLE.NET*, <http://us.battle.net/d3/en/game/guide/gameplay/playing-with-friends> [<http://perma.cc/HP7G-MF8T>].

50. *Id.*

51. *Id.*

52. *Id.*

53. See *id.*

54. See *id.*

55. *Playing With Friends*, *supra* note 49.

### B. Virtual Currency Systems

As is evident by the above discussion, the aforementioned games have some form of virtual currency, which in most cases is referred to as “gold.”<sup>56</sup> Online gaming environments generally have one of three virtual currency systems that dictate the method of exchange of that currency: closed-flow systems, open-flow systems, and hybrid systems.<sup>57</sup>

#### 1. Closed-flow

In a closed-flow system, virtual currency is only exchangeable for virtual goods and services, and vice versa.<sup>58</sup> Most MMORPG and ARPGs, such as WoW and Diablo III, operate using a closed-flow system.<sup>59</sup> Even so, in 2015, WoW created a quasi-closed-flow system where players are able to purchase what is known as a WoW Token, for real money, through the game itself.<sup>60</sup> They are then able to put their purchased WoW Tokens up for sale in the in-game Auction House in exchange for gold earned by killing monsters in-game.<sup>61</sup> The player who sold the WoW Token will now have indirectly purchased gold through the game.<sup>62</sup> Players can then use virtual currency to purchase weapons or repair their character’s damaged armor after a grueling battle with monsters or bosses.<sup>63</sup> Conversely,

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56. See, e.g., *What Is World of Warcraft*, *supra* note 21.

57. U.S. GOV’T ACCOUNTABILITY OFF., GAO-13-516, VIRTUAL ECONOMIES AND CURRENCIES: ADDITIONAL IRS GUIDANCE COULD REDUCE TAX COMPLIANCE RISK 4–5 (May 2013), <http://www.gao.gov/assets/660/654620.pdf> [<http://perma.cc/W5VU-WJJT>].

58. *Id.* at 4.; Jeffrey Anand, Note, *Virtual Economies Virtually Unregulated: How Clear Taxpayer Guidance Can Mitigate Tax Compliance Risks*, 43 HOFSTRA L. REV. 253, 265 (2014).

59. See *Battle.net End User License Agreement*, BLIZZARD (Feb. 28, 2015), <http://us.blizzard.com/en-us/company/legal/eula.html> [<http://perma.cc/9SLU-76K5>] [hereinafter *Battle.net EULA*].

60. *Introducing the WoW Token*, BATTLE.NET, <http://us.battle.net/wow/en/blog/18141101/introducing-the-wow-token-3-2-2015> [<http://perma.cc/3AHH-J6S3>].

61. *Id.*

62. *Id.*

63. *Id.*; see *Repair*, DIABLO WIKI (Aug. 24, 2013, 3:15 AM), <http://diablo.gamepedia.com/Repair> [<http://perma.cc/9PG7-TFQ4>].

players who purchased the WoW Token through the Auction House may redeem it to add thirty days of free gameplay to their WoW account.<sup>64</sup> Although some of these games allow players to directly purchase virtual currency through the game using real money, like WoW,<sup>65</sup> this currency cannot then be sold back or sold to other players for real money without violating the terms of service.<sup>66</sup>

## 2. Open-flow

In an open-flow system, virtual currency is exchangeable for U.S. dollars, real goods and services, and virtual goods and services.<sup>67</sup> While games such as Second Life allow players to sell in-game currency for real money through their own virtual exchange system,<sup>68</sup> or through third parties such as PayPal, most MMORPGs or ARPGs do not allow such transactions to occur.<sup>69</sup>

## 3. Hybrid

Finally, in a hybrid system, real money is exchangeable for virtual currency. Virtual currency is exchangeable for both real and virtual goods and services, and vice versa.<sup>70</sup> While there is no game or RMT transaction

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64. Introducing the *WoW Token*, *supra* note 60.

65. *Id.*; see also Melissa Loomis, *Fixing the Economy: How World of Warcraft is Trying to End Gold Farming*, GAME RANT (Apr. 15, 2015), <http://gamerant.com/world-of-warcraft-end-gold-farming/> [<http://perma.cc/JY8H-KV4S>].

66. See *Battle.net EULA*, *supra* note 59.

67. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 57, at 5; Anand, *supra* note 58, at 267.

68. See, e.g., Brett Linden, *Buying and Selling Linden Dollars*, SECOND LIFE (Oct. 15, 2015), <http://community.secondlife.com/t5/English-Knowledge-Base/Buying-and-selling-Linden-dollars/ta-p/700107> [<http://perma.cc/UN34-GFYZ>] (“The LindeX is the official virtual exchange of Second Life run by Linden Lab where you can: [b]uy Linden dollars for the current market rate[.] [m]ake limit buy offers at a requested exchange rate (or better)[, and] [s]ell Linden dollars.”).

69. See Anand, *supra* note 58, at 265 (“Most virtual worlds are classified as closed-flow systems.”); *Battle.net EULA*, *supra* note 59.

70. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 57, at 4; Anand, *supra* note 58, at 265–66.

system that perfectly fits into this category, RMT transactions between players and third parties such as gold farmers are likely to be the closest example. The difference between the current RMT environment and a hybrid virtual currency system is that players do not currently use virtual currency to purchase real goods and services from third parties.<sup>71</sup> They do, however, exchange real money for virtual currency, and both real money and virtual currency for virtual goods, such as weapons and virtual services such as power-leveling.<sup>72</sup> The following section will provide a more precise explanation of the phenomenon.

### C. RMT

Real Money Trading is a process that usually takes place between online virtual world players and players who are dedicated “gold farmers.”<sup>73</sup> Although in much smaller numbers, RMT may also occur between players.

Most in-game gold farming occurs in China.<sup>74</sup> Chinese gold farming companies have anywhere from ten to one-thousand employees working twelve-hour shifts to collect gold and items to sell to Western players for real world money.<sup>75</sup> Although many U.S. players also farm items and gold,

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71. See SwootCandy, *Gold...What To Do With It?*, BATTLE.NET, <http://us.battle.net/d3/en/forum/topic/16202110050> [<http://perma.cc/52G5-7EDL>] (expressing ideas for new, expensive in-game goods because gold is acquired so easily that players do not know what to spend it on).

72. See *WoW Powerleveling*, PLAYERAUCTIONS, <http://www.playerauctions.com/wow-power-leveling/> [<http://perma.cc/PE2D-FEUD>] (providing a forum in which players can pay real money for someone else to play their character until a desired level is reached); *WoW Items*, PLAYERAUCTIONS, <http://www.playerauctions.com/wow-items/> [<http://perma.cc/B7LK-HLAD>] (providing a forum in which players can pay real money for another player's virtual items).

73. See Stephen Totilo, *Documentary Reaps Truth About Game's Controversial 'Gold Farming'*, MTV NEWS (Nov. 15, 2006), <http://www.mtv.com/news/1545919/documentary-reaps-truth-about-games-controversial-gold-farming/> [<http://perma.cc/3AVW-XS4K>].

74. *Gold Farmer*, WOWWIKI, [http://wowwiki.wikia.com/wiki/Gold\\_farmer](http://wowwiki.wikia.com/wiki/Gold_farmer) [<http://perma.cc/MHJ8-M4CV>] (“China’s abundant labor, availability of high-speed Internet connections and cheap computers have made it a powerhouse in collecting virtual assets for online games, fueling the market among the 30 million or so online gamers worldwide.”); Julian Dibbell, *The Life of the Chinese Gold Farmer*, N.Y. TIMES (June 17, 2007), <http://www.nytimes.com/2007/06/17/magazine/17lootfarmers-t.html> [<http://perma.cc/AE95-ELUW>] (estimating 100,000 Chinese gold farmers were employed in 2007 to produce the bulk of all the goods in the global RMT industry).

75. Dibbell, *supra* note 74.

there are currently no U.S. gold farming companies,<sup>76</sup> likely due to property-related issues with virtual items and currency. There are, however, companies based in Hong Kong with employees based at branch offices in Europe and the U.S.<sup>77</sup>

### 1. What is RMT?

Hours (or days) of raiding are not for the faint of heart—not every player is able to expend the time and effort needed away from his or her real-world life. As such, players attempt to obtain the best gear and loot through less time consuming channels. RMT is a transaction in which players use real money to purchase in-game currency and in-game items, such as swords and armor, from other players or gold farmers.<sup>78</sup> As most games operate in closed-flow economies, players turn to gold farmers to engage in limited open-flow. These transactions are limited because RMT only involves the trading of virtual items, currency, and services for U.S. dollars and not for real goods and services as they would in traditional open-flow economies.<sup>79</sup>

While games can build RMT into their gaming environments, the high volume of cheaper “black market” RMT options through Chinese gold farmers and others makes these transactions less likely to occur or generate

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76. While there are many individual players in the U.S. who do farm for gold, to the best of this author’s research, there are no companies—incorporated or not—that employ gold farmers operating in or from the United States. See William Alexander, *How to Make Thousands of Pounds a Month Playing Computer Games*, VICE (May 8, 2013), [http://www.vice.com/en\\_uk/read/i-make-thousands-of-dollars-a-month-from-playing-computer-games](http://www.vice.com/en_uk/read/i-make-thousands-of-dollars-a-month-from-playing-computer-games) [<http://perma.cc/83YK-9GTZ>] (interviewing a 17-year-old American gold farmer who makes \$10,000 a month farming gold in RuneScape); cf. Julian Dibbell, *Owned! Intellectual Property in the Age of eBayers, Gold Farmers, and Other Enemies of the Virtual State Or, How I Learned to Stop Worrying and Love the End-User License Agreement*, in *THE STATE OF PLAY: LAW, GAMES, AND VIRTUAL WORLDS* 137 (Jack M. Balkin & Beth Simone Noveck eds., 2006) (discussing the 2002 case of Blacksnow Interactive, a now-disbanded company that was based in California and had employed gold farmers in Tijuana).

77. See, e.g., *FAQ*, PLS, <http://www.power-leveling-service.us/faq.html> [<http://perma.cc/75SN-44LF>] (“Live support is in Hong Kong, [and] the levelers are in European and US branch offices of our company.”).

78. See *Real Money Trading (RMT)*, SQUARE ENIX, <http://support.na.square-enix.com/faqarticle.php?id=20&kid=12802> [<http://perma.cc/V6HN-J8YC>].

79. See *id.* (“Real Money Trading (RMT) is the sale of in-game items, currency, characters, or other data to obtain real money.”).

large amounts of revenue.<sup>80</sup> Even though some games offer in-game auction houses,<sup>81</sup> the items and currency for sale on third party websites are usually cheaper.<sup>82</sup> Players utilize these RMT transactions to purchase in-game currency, in-game items, power-leveling services, or even full accounts with multiple high level characters.<sup>83</sup> Most game End User License Agreements (EULAs) expressly prohibit the selling and buying of in-game items and currency. In turn, players run the risk of being banned from games and losing their accounts.<sup>84</sup> Nevertheless, players forgo using in-game auction houses and exchange services (which are usually safer), where purchases are likely guaranteed through the game developers. Instead, players still choose to use these “black market” websites that clearly violate game EULAs because they provide a better return.<sup>85</sup>

#### a. In-game Currency

Sometimes, players are able to obtain in-game items from other players by trading the equivalent value of in-game currency.<sup>86</sup> For example, Jane might trade for a crossbow for her Hunter Night Elf in exchange for the estimated value in gold. However, as Jane only casually plays WoW, she does not have enough gold to trade for the crossbow. Desperate for the shiny new crossbow, Jane turns to Chinese gold farmers to obtain the necessary gold. These farmers—either by using hacks or

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80. See, e.g., *Battle.net EULA*, *supra* note 59 (lacking an in-game RMT system).

81. See, e.g., Blizzard Entertainment, *Diablo III Auction House Update*, BATTLE.NET (May 1, 2012), <http://us.battle.net/d3/en/blog/5270376> [<http://perma.cc/X57M-A985>] (explaining that Diablo III’s Real Money Auction House was a short lived attempt at an in-game trading system).

82. See Veanna, *How Much Gold Would You Pay for a Game Token?*, BATTLE.NET (Mar. 24, 2015), <http://us.battle.net/wow/en/forum/topic/16774527320> [<http://perma.cc/5AJR-KHUW>] (stating that 1,000 gold in WoW would cost a player \$1000); see also EPICTOON, <http://www.epictoon.com/> [<https://perma.cc/36DN-PEEF>] (explaining that a player is able to purchase 50,000 WoW gold for use on a U.S. server for less than \$20).

83. See *WoW Accounts*, PLAYERAUCTIONS, <http://www.playerauctions.com/wow-account/> [<http://perma.cc/5MAC-QJ7E>] (displaying various tabs labeled Gold, Accounts, Powerleveling, Items, Guides, CD Keys).

84. See, e.g., *Battle.net EULA*, *supra* note 59.

85. See, e.g., EPICTOON, *supra* note 82.

86. See *Trade*, WOWWIKI, <http://wowwiki.wikia.com/wiki/Trade> [<http://perma.cc/8H7Y-QUHN?type=image>].

“bots” to automatically kill monsters and collect gold, or by manually killing monsters that drop gold—farm this gold during their twelve-hour workdays, and sell it through their third party websites.<sup>87</sup> Players then use the gold they purchase from these gold farmers to purchase in-game items that would advance their gameplay by increasing the strength and durability of their characters.<sup>88</sup>

Jane does a simple Google search for “WoW gold” and her computer browser is suddenly inundated with hundreds of websites selling WoW in-game currency for real U.S. dollars.<sup>89</sup> Jane selects a link, [epictoon.com](http://epictoon.com), and goes to the website where she may then purchase gold. Jane selects her game (WoW), the server on which she plays, and the amount of gold she wishes to purchase.<sup>90</sup> Jane then purchases 1,000,000 gold for around \$400.<sup>91</sup>

Although MMORPGs usually have different servers to cater to players in different time zones,<sup>92</sup> many international players often play on U.S. servers.<sup>93</sup> With over 157 million active players in the U.S., it is no wonder many Chinese gold farmers choose to play on U.S. servers to build their clientele.<sup>94</sup> Due to the constant interaction between players, these gold farmers are able to sell directly to players in-game, as opposed to

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87. See, e.g., IGE, <http://www.ige.com/> [<http://perma.cc/FB8Z-WLJM>].

88. See *What is World of Warcraft*, *supra* note 21 (“[Y]our character progresses and gets stronger as you gain experience, new skills, and more powerful items and equipment.”).

89. See, e.g., IGE, *supra* note 87; EPICTOON, *supra* note 82; *WoW Gold*, PLAYERAUCTIONS, <http://www.playerauctions.com/wow-gold/> [<http://perma.cc/F7UM-DPD9>].

90. See EPICTOON, *supra* note 82.

91. See *id.* This price regularly fluctuates, but remains around the \$400 mark. To generate a price, the page asks you to select a game, then a server, and then the amount of gold you would like to purchase.

92. See *Realm Status*, BATTLE.NET, <http://us.battle.net/wow/en/status> [<http://perma.cc/5YT9-U2KF>] (listing all available *WoW realms*).

93. See Zappera, *Non-US Players Playing on US Servers, Do your Non-US Credit Cards Work for Payment?*, REDDIT (Mar. 19, 2015), [http://www.reddit.com/r/wow/comments/2zkswu/nonus\\_players\\_playing\\_on\\_us\\_servers\\_do\\_your\\_nonus/](http://www.reddit.com/r/wow/comments/2zkswu/nonus_players_playing_on_us_servers_do_your_nonus/) [<http://perma.cc/BU2A-5VQH>].

94. *Country Ranking 2012: Active Video Game Players and Payers*, STATISTA, <http://www.statista.com/statistics/195768/active-video-game-players-and-payers-in-selected-countries/> [<http://perma.cc/X7X4-KHJC?type=image>].

hoping for players to find their gold farming websites through a Google search.

On the other hand, as ARPG players do not interact with one another as often as they would in MMORPGs, more ARPG players seek out gold and item farmers through online forums or dedicated gold farming websites as opposed to seeking out these items from their fellow players.<sup>95</sup> Unlike gold farmers, whose business it is to sell in-game currency, players do not usually engage in RMT as farming currency is very time consuming and would take away from actual gameplay.<sup>96</sup> Nevertheless, it is also possible to engage in RMT on a player-to-player basis for both MMORPG and ARPG games.<sup>97</sup>

### b. In-game Items

As discussed above, the best in-game items require much effort to obtain.<sup>98</sup> As such, players like Jane might not be willing to give up the fruit of their labor, no matter how much gold they are offered. Therefore, Jane may also directly purchase in-game items, such as weapons and pets, from the same companies who farm gold.<sup>99</sup> These items will aid her in fighting higher- level monsters or bosses that in-turn drop better and more valuable items.<sup>100</sup> Furthermore, unlike gold, players may also purchase items from

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95. See, e.g., DIABLOIIIGOLD.COM, <http://www.diabloiiigold.com/> [<https://perma.cc/2KNZ-KU7G>].

96. See Ozryk, Comment to *Gold Farming?*, BATTLE.NET (Feb. 9, 2016), <http://us.battle.net/wow/en/forum/topic/20742314411#1> [<http://perma.cc/3EBM-NNLW>] (“My tip is to advise you not to [farm gold]. Farming gold is work, and if you’re going to work for gold, you may as well do it at a rate that’s not a complete waste of your time. One WoW token goes for about \$37k gold. Assuming you can farm a very efficient 5k gold per hour, that’s over 7 hours to earn \$20.00. That means you’re working for just over \$2.85/hr. For reference, the [2016] federal minimum wage for non-tipped workers is \$7.50 [per] hour.”).

97. See *WoW Gold*, *supra* note 89.

98. See *supra* Part II.A.

99. See, e.g., *Diablo III Items*, DIABLOIIIGOLD.COM, <http://www.diabloiiigold.com/powerleveling/diablo3-items.html> [<http://perma.cc/2KNZ-KU7G>] (listing in-game items for sale such as Green Random Legendary Armor and a Hellfire Ring).

100. See *Diablo III: Game Difficulty*, BATTLE.NET, <http://us.battle.net/d3/en/game/guide/gameplay/game-difficulty> [<https://perma.cc/EK4V-SANQ>] (“In general, monsters in higher difficulties . . . are tougher and their attacks are mor devastating. However, greater gold, experience, and item rewards await you on the higher difficulties.”).

other players who have acquired them while playing the game, as opposed to those who deliberately farm these items. Purchasing items from players involves a different process than purchasing through gold farming websites, as players usually do not have their own websites through which they can facilitate sales.<sup>101</sup>

#### c. Power-Leveling

Many companies that farm gold also offer power-leveling services to quickly “level up” players’ characters so that players may enjoy the perks of playing the game at higher levels, without spending the necessary time and effort to reach those higher levels.<sup>102</sup> Unlike in-game items or in-game currency, players do not usually receive any form of virtual property from these transactions.<sup>103</sup> Once a player pays for the power-leveling service through a company’s website, employees, similar to gold farmers, log onto a player’s account and play their character for them until they reach the player’s desired level.<sup>104</sup> For example, PLS, a power-leveling service, charges WoW players \$125.87 to level up a level 1 character to a level 100 character in six days and three hours.<sup>105</sup>

#### d. Accounts

Each player in a game has his or her own account, usually linked to his or her email address.<sup>106</sup> Unless a player chooses to form separate

101. Players are able to purchase items using a third party website such as PlayerAuctions to purchase items directly from other players, as opposed to purchasing them through gold farming websites. *See WoW Items, supra* note 72.

102. *See, e.g., Game Powerleveling, YGS YOYO GAME STORE, <http://www.mmopowerlevel.net/powerleveling.php> [<http://perma.cc/JR8W-QW96>]; *see Powerleveling, DIABLOIIIGOLD.COM, <http://www.diabloiiigold.com/powerleveling> [<http://perma.cc/S2RG-BARY>]; *World of Warcraft US Power Leveling, PLS, <http://www.plsgamemall.us/wow-world-of-warcraft-gold-us-powerleveling.html> [<https://perma.cc/N8HD-NPFQ>].***

103. This depends on the arrangement between the player and the power-leveling company. If they have agreed that the player will keep any item that the “power-leveler” picks up from killing monsters while leveling the player’s character(s), then the transaction will also include the gain of virtual property.

104. *See, e.g., World of Warcraft US Power Leveling, supra* note 102.

105. *See id.*

106. *See Create a Free Account, supra* note 29.

accounts for each character, all of the characters are tied to a single account. Both gold farmers and ordinary players regularly sell valuable accounts with multiple high-level characters and rare items.<sup>107</sup> Much like buying and selling items and gold, purchasing another player's account can lead to the banning of that account.<sup>108</sup> To the dismay of players who purchase these accounts, developers are able to detect an account transfer more easily than the RMT of items or gold, because other players in the game may realize that there is a new person playing the account and report them to the developer.<sup>109</sup> Therefore, these RMTs are much riskier than other forms of RMT.

## 2. Forms of RMT

### a. Direct from Gold Farming Websites

Gold farming websites are solely dedicated to selling gold, accounts, and other in-game items.<sup>110</sup> Players pay gold farming websites directly and farmers then "trade" currency or items within the game.<sup>111</sup> This trade is done through the game itself.<sup>112</sup> Players are allowed to trade items and currency with other players through an in-game trading system.<sup>113</sup> Each gold farmer uses their own character to farm the gold and items, and trade with customers within the game.<sup>114</sup> As such, gold farmers and regular players are mostly indistinguishable in-game. Some gold farmers utilize a

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107. See *WoW Accounts*, *supra* note 83.

108. See *Battle.net EULA*, *supra* note 59.

109. See, e.g., Tenfoottall, *Sold Account*, BATTLE.NET, <http://us.battle.net/wow/en/forum/topic/7763736517#1> [<http://perma.cc/6TKG-CL8R>] (asking game developers to ban an account that was sold on Craigstlist.com).

110. See, e.g., IGE, *supra* note 87; PLS, <http://www.plsgamemall.us/> [<http://perma.cc/48NG-FV3U>].

111. See *World of Warcraft Gold US Delivery Method*, PLS, <http://www.plsgamemall.us/wow-world-of-warcraft-gold-us-gold.html#faq1500> [<http://perma.cc/R6T3-5XNW>] ("Face to Face: Before you select face to face delivery method, please confirm your character name and realm in game.").

112. See *id.*

113. See *Trade*, *supra* note 86.

114. See *World of Warcraft Gold US Delivery Method*, *supra* note 111.

“bot,” a third party application that allows the character to automatically farm for gold and items with little to no effort on the part of the farmer.<sup>115</sup> Players may be able to detect if a player is utilizing a “bot” if, for example, a player does not respond to any messages, or is continuously in the same location, performing the same tasks over and over.<sup>116</sup> This too, however, is not always a reliable way to distinguish a for-profit gold farmer from an ordinary player because ordinary players also sometimes engage in this activity to advance their own characters.<sup>117</sup>

## b. Forums

Because the only way to receive an item or gold is to trade in-game with other players, much of RMT is based on trust. Players use online forums to rate the reliability of RMT with various gold farmers and with fellow players.<sup>118</sup> This provides players with a feeling of security, as for-profit gold farmers would not risk the reputation of their gold farming enterprises to get away with scamming a few clients out of the promised gold or items. Once a player has found a gold farmer he or she feels comfortable trading with, the player transfers real money funds to the gold farmer who then gives the item or gold to the player in the game.<sup>119</sup>

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115. See Wildbomb, *Possible Gold Farming Bots?*, BATTLE.NET (Mar. 16, 2013), <http://us.battle.net/wow/en/forum/topic/8197762001> [<http://perma.cc/D4AV-P6SU>] (noticing the same group of level 80 hunters in the same spot for twelve hours).

116. See Frejya, Comment to *Possible Gold Farming Bots?*, BATTLE.NET (Mar. 16, 2013), <http://us.battle.net/wow/en/forum/topic/8197762001> [<http://perma.cc/D4AV-P6SU>] (suggesting that someone “whisper” to a suspected bot to see if there is a human response).

117. See Emeraldreamx, *Good Gold Farming Guides?*, BATTLE.NET (Feb. 14, 2015), <http://us.battle.net/wow/en/forum/topic/16353325354> [<https://perma.cc/Y226-PYKJ>] (asking players their opinion of the best spots for farming gold).

118. See *Reputation, Feedback & Honors*, PLAYERAUCTIONS, <http://www.playerauctions.com/help/reputation-feedback-honors/> [<http://perma.cc/2DE4-39LV>]. (explaining that players who regularly engage in RMT outside of the games are able to rate one another and make decisions on whether or not to purchase from a player based on a players ratings and feedback from previous RMT transactions).

119. See *Making Your First Purchase*, PLAYERAUCTIONS, <http://www.playerauctions.com/help/content/making-your-first-purchase/> [<http://perma.cc/C5YJ-9KMJ>].

### c. Player-to-player

Many ordinary players sell their WoW accounts using websites such as PlayerAuctions.com.<sup>120</sup> For example, players can purchase a level 90 Hunter Starter Account for \$25, a God Account with ten level 100 characters and rare items for \$15,000, or a wide variety of other accounts available within those two price ranges.<sup>121</sup>

## 3. Exploitation of PayPal

### a. Gold Farmers

Aside from having their own websites dedicated to selling in-game items and currency, many gold farmers also use PayPal's gifting system.<sup>122</sup> Gold farmers use this system to sell gold or items and to avoid transaction fees associated with websites like eBay that utilize PayPal to tender payment.<sup>123</sup> Similar to other methods of buying and selling in-game items, players "gift" money to other players or for-profit farmers.<sup>124</sup> Those sellers then transfer the items to their buyers, through the in-game trading process.<sup>125</sup> This process not only aids in limiting transaction costs, but also acts as a means of tax evasion, as it reclassifies a clear sale into the transfer of a gift.<sup>126</sup>

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120. See *WoW Accounts*, *supra* note 83.

121. See *id.*

122. See *PayPal Fees*, PAYPAL, <http://www.paypal.com/webapps/mpp/paypal-fees> [<http://perma.cc/869W-5JH8>]; Josh, Comment to *Warning! Do Not Sell Gold Via PayPal!*, BATTLE.NET (July 21, 2013, 1:01 AM), <http://us.battle.net/d3/en/forum/topic/6146725790> [<http://perma.cc/BD67-32BE>] (warning players of his experience selling WoW gold using PayPal's gifting system to avoid transaction costs and violating Blizzard's and PayPal's EULA).

123. See, e.g., Josh, *supra* note 122.

124. See *id.*

125. See *id.*

126. Making the sale as a gift is evasion only if the U.S. has jurisdiction to tax the gold farmers. This will be discussed in further detail below. See *infra* Part IV.B.2.

## b. Players

Like gold farmers, players who engage in buying farmed gold may be using alternative avenues to engage in RMT transactions.<sup>127</sup> As the property they are buying and selling is technically not theirs to sell, players may be engaging in these backdoor transactions to avoid the banning or suspension of their accounts.<sup>128</sup> Nevertheless, it is also likely that players engage in high volumes of transactions to evade any form of tax consequences that may arise from these transactions.<sup>129</sup> On the other hand, many players may not even realize that these RMT transactions produce real-world, taxable consequences. As such, any future regulatory action by the IRS must be highly publicized, perhaps even posted on popular gaming forums, to reach the masses and inform the ignorant of the ramifications of their actions.<sup>130</sup>

Since 26% of gamers in America are under the age of eighteen,<sup>131</sup> it is likely that many of these players have little or no taxable income outside of what they may be generating through RMT. Taxes on income earned from RMT are likely to be regarded as self-employment taxes.<sup>132</sup> The self-

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127. See, e.g., Josh, *supra* note 122.

128. See *Battle.net EULA*, *supra* note 59 (“C. License Limitations. . . . iii. Prohibited Commercial Uses: Exploit, in their entirety or individual components, the Battle.net Client, Battle.net or the Game(s) for any purpose not expressly authorized by Blizzard, including, without limitation (i) playing the Game(s) at commercial establishments (subject to Section 1(B)(vi)(3)); (ii) gathering in-game currency, items, or resources for sale outside of Battle.net or the Game(s); (iii) performing in-game services, like power-leveling, in exchange for payment outside of Battle.net or the Game(s); or (iv) communicating or facilitating (by text, live audio communications, or otherwise) any commercial advertisement, solicitation or offer through or within Battle.net or the Game(s).”).

129. See Anand, *supra* note 58, at 289 (“[Internal Revenue Code section 6050W] requires third-party payment facilitators to report the total amount of revenue received by U.S. account holders to the IRS when they receive in excess of twenty thousand dollars in two hundred or more transactions within a calendar year.”).

130. See *id.* at 255–56 (“Since levels of voluntary compliance with the [I.R.C.] are, historically speaking, quite high, it follows that providing more information to taxpayers is likely to lead to increased conformity.”)

131. See *Video Games: The New Social Setting*, ENTMT SOFTWARE ASS’N, <http://www.theesa.com/wp-content/uploads/2015/04/Essential-Facts-2015-Infographic.pdf> [<http://perma.cc/4KL2-STNR>].

132. See I.R.C. § 1402 (2014).

employment tax extends to all individuals who earn \$400 or more a year and engage in a “trade or business.”<sup>133</sup> If an underage or low-income player exceeds this amount, RMT-generated revenue will be subject to a 15.3% tax rate.<sup>134</sup> Unfortunately, without any prior knowledge of taxation, it is unlikely that these underage players, even if they generate \$400 or more in income, will even file a tax return.<sup>135</sup>

### III. PREVIOUSLY PROPOSED SOLUTIONS

#### A. Sales and Use Tax

One suggestion to address the issue of taxation on RMT is to impose a sales or use tax on RMT transactions.<sup>136</sup> Applying a sales or use tax to in-game items raises certain issues concerning basis and income calculation.<sup>137</sup> If a player were to resell an item at a higher price, their basis would be what they initially purchased the item for.<sup>138</sup> The problem here lies in the basis of the original seller. It seems unfair to assume the basis in the item for the original seller is \$0, as the player likely spent much time and effort in cultivating that item.<sup>139</sup> Therefore, it is equally unfair to tax the reseller only on the difference between their purchase price and their selling price.<sup>140</sup>

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133. See *id.* (supporting the notion that these high volume asset selling players would be considered to be engaging in a trade or business because they are in the business of regularly selling in-game assets).

134. See I.R.C. § 1401 (2014).

135. See *Teens & Taxes*, TEENS GUIDE TO MONEY, <http://www.teensguidetomoney.com/earning/teens--taxes/> [http://perma.cc/395W-KCGB] (“Nobody likes to pay taxes and most teens don’t think they have to.”).

136. Jeffrey Anand, Note, *Virtual Economies Virtually Unregulated: How Clear Taxpayer Guidance Can Mitigate Tax Compliance Risks*, 43 HOFSTRA L. REV. 253, 278 (2014).

137. *Id.*

138. *Id.*

139. See *id.*

140. Given items are not usually resold, this unfairness may not be as prominent.

A further complication arises when the original seller uses in-game gold which they purchased through RMT to purchase in-game items.<sup>141</sup> Due to the fact that neither sellers nor buyers report these purchases,<sup>142</sup> there is likely no record, for example, of the exact price Jane spent on 2,000,000 gold two years ago. The exact value of the in-game currency in dollars must be known to calculate how much real world money was spent by the original purchaser to calculate their basis in the item, and therein lies the problem. In any case, even if there was no issue in calculating basis, many states simply do not apply sales tax to electronically transferred products.<sup>143</sup>

Furthermore, we reach a problem in attempting to tax the service aspect of RMT. This problem arises when players pay gold farmers to power-level their accounts for them. If gold farmers are simply playing a player's character for them, they are providing a service and not a good. Even if players were able to keep any currency or items that the gold farmer acquires during the power-leveling session, that would still be a byproduct of the main purpose of the power-leveling service. Simply applying a sales and use tax on RMT will cover neither transactions involving power-leveling, nor transactions involving the assistance of lower level players in completing higher level quests by killing bosses or monsters with higher difficulty levels.

### *B. In-game Tax Day*

Another suggestion is to have an in-game tax day, meaning the IRS would incentivize players to pay taxes by providing them with in-game items on a specified day each year.<sup>144</sup> The idea behind this proposal was to provide players with unique in-game items for complying with tax law by reporting any earned income generated through RMT.<sup>145</sup> Although this

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141. See Anand, *supra* note 136, at 273.

142. Brian E. Mennecke et al., *It's Just a Game, Or Is It? Real Money, Real Income, and Real Taxes in Virtual Worlds*, 20 COMM'NS ASS'N INFO. SYSS. 134, 138 (2007) ("Currently, few players comply by self-reporting taxable game income.").

143. California State Board of Equalization, *Publication 109, Internet Sales* (2015).

144. See Anand, *supra* note 136, at 279. See generally Eric G. Roscoe, *Taxing Virtual Worlds: Can the IRS PWN You?*, 12 PITT. J. TECH. L. & POL'Y 1 (2011) (proposing that virtual worlds create an in-game IRS office and tax day).

145. See Roscoe, *supra* note 144, at 33.

would incentivize tax paying, it seems counterintuitive. If the IRS is holding rare items as a “carrot” for players to incentivize tax compliance, once a majority of players comply, there will no longer be any benefit in receiving the item because it will no longer be unique. Thus, we would generate yet another cycle of tax evaders expecting a new “carrot” to begin complying with the law again.

Instead, similar to what South Korea has imposed, it might be beneficial to impose a fine, or even jail time on anyone engaging in RMT.<sup>146</sup> The U.S. could also impose a similar penalty for failing to pay the tax and not for RMT transactions in general. As discussed below, the U.S. is already fining foreign banks for not providing the information of U.S. citizens living abroad.<sup>147</sup> Therefore, it may be likely that the U.S. could implement such a penalty on U.S. taxpayers failing to pay taxes for RMT transactions.

### C. Governmental Virtual Currency Exchange

A third suggestion is the formation of governmental virtual currency exchanges.<sup>148</sup> A government-regulated exchange would provide players with a secure place to exchange their virtual currency for real money in a safe and controlled environment.<sup>149</sup> Here, the government would be able to tax every currency exchange individually.<sup>150</sup> While this may be an effective way to tax virtual currency income, many younger players would be unaware of this system.<sup>151</sup> Even if younger players became aware or

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146. Cho Mu-hyun, *Korea Prohibits Trade of Online Game Items*, KOREA TIMES (June 13, 2012, 5:14 PM), [http://www.koreatimes.co.kr/www/news/tech/2012/06/129\\_112964.html](http://www.koreatimes.co.kr/www/news/tech/2012/06/129_112964.html) [<http://perma.cc/G2SY-JFQL>] (imposing a 50 million won fine for trading commercially or using a bot).

147. Robert W. Wood, *FATCA, IRS Global Tax Law, Is Everywhere—Even Russia & China*, FORBES (July 1, 2014, 3:17 AM), <http://www.forbes.com/sites/robertwood/2014/07/01/fatca-is-finally-here-even-in-russia-china/> [<http://perma.cc/857Y-PU52>].

148. Anand, *supra* note 136, at 287–89.

149. *Id.* at 288.

150. See Robert Schlimgen, Note, *Virtual World, Real Taxes: A Sales and Use Tax Adventure Through Second Life Starring Dwight Schrute*, 11 MINN. J.L. SCI. & TECH. 877, 892 (2010).

151. See *Teens & Taxes*, TEENS GUIDE TO MONEY, <http://www.teensguidetomoney.com/earning/teens--taxes/> [<http://perma.cc/395W-KCGB>]

understood how the system would function, they may encounter difficulties participating in such a system. Most banks require teens between the ages of thirteen and seventeen to have an adult co-owner to open a checking account.<sup>152</sup> Parents may be unwilling to allow their children to bind their checking accounts to a currency exchange service, fearing their children would abuse the money in the account.

Moreover, this form of currency exchange system will likely only prove useful to players of games such as *Second Life*, who are already accustomed to gameplay with its own currency exchange system. Companies based in China generate most of the income from RMT transactions of in-game currency and items for games such as *Diablo III* or *WoW*.<sup>153</sup> Furthermore, players in the U.S. are generally not in the business of selling currency, but occasionally sell items that they farm themselves or win during a boss fight.<sup>154</sup> As such, this system will likely have little to no impact on the current tax evaders, as U.S. players do not necessarily derive a direct and substantial financial benefit from playing these games.

#### IV. SOLUTIONS TO THE LACK OF DETERRENCE OF RMT

There are three possible solutions to the lack of deterrence of RMT. First, the U.S. might attempt to regulate these transactions through legislation. Second, the U.S. may impose a tax on RMT transactions. Third, the U.S. may regulate RMT through the games themselves.

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(“Nobody likes to pay taxes and most teens don’t think they have to.”)

152. See *Chase High School Checking*, CHASE, <http://www.chase.com/checking/student-checking> [<http://perma.cc/BM43-LGDU>] (specifying the co-owners must be parents or guardians with their own personal Chase checking accounts to which they may link the minor’s account); *Citibank Junior Account*, CITIBANK, <http://www.online.citibank.co.in/products-services/banking/bank-account/junior-account.htm> [<http://perma.cc/3AM7-5Y3V>] (requiring the co-owner of the account to be the minor’s guardian with an existing Citibank account). But see *Wells Fargo Teen Checking*, WELLS FARGO, <http://www.wellsfargo.com/checking/teen/> [<http://perma.cc/9QM2-QVVF>] (noting the co-owner of the account has to be an adult but not specifying whether the adult has to be the minor’s parent or guardian).

153. Sarah Jacobsson Purewal, *Chinese Prisoners Allegedly Forced to Play ‘World of Warcraft’*, PCWORLD, [http://www.peworld.com/article/228716/Chinese\\_Prisoners\\_Allegedly\\_Forced\\_to\\_Play\\_World\\_of\\_Warcraft.html](http://www.peworld.com/article/228716/Chinese_Prisoners_Allegedly_Forced_to_Play_World_of_Warcraft.html) [<http://perma.cc/7NXW-XAQ2>] (“[A]n estimated 80 percent of all gold farmers are Chinese.”).

154. See, e.g., *WoW Items*, PLAYERAUCTIONS, <http://www.playerauctions.com/wow-items/> [<https://perma.cc/2PP6-EKZF>].

### A. Government Regulation

In a more drastic move than those proposed here, South Korea's Ministry of Culture, Sports and Tourism banned not only RMT of in-game currency and items, but also any form of hacking, "botting," or gold farming.<sup>155</sup> While their objective was to reduce time spent playing these games and not to address the tax implications of RMT, South Korea seems to be heading in the right direction.<sup>156</sup> The Ministry intends to enforce its newly enacted law by imposing a whopping 50 million won (\$44,000 USD) fine, and a maximum five-year prison sentence for any violation.<sup>157</sup>

### B. Taxation

#### 1. China

With at least 100,000 full-time gold farmers,<sup>158</sup> China currently imposes a 20% tax on RMT as a result of gold farming.<sup>159</sup> Eight of the largest suppliers have an annual revenue of US \$10 million each,<sup>160</sup> generating a sizeable tax revenue. Moreover, the Chinese government itself is in the business of gold farming, as the government forces labor camp prisoners to farm gold for the state.<sup>161</sup> This fact raises considerable

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155. Cho Mu-hyun, *Korea Prohibits Trade of Online Game Items*, KOREA TIMES (June 13, 2012, 5:14 PM), [http://www.koreatimes.co.kr/www/news/tech/2012/06/129\\_112964.html](http://www.koreatimes.co.kr/www/news/tech/2012/06/129_112964.html) [<http://perma.cc/G2SY-JFQL>]; Mike Rose, *Virtual Item Trading to Be Banned in South Korea*, GAMASUTRA (June 15, 2012), [http://www.gamasutra.com/view/news/172452/Virtual\\_item\\_trading\\_to\\_be\\_banned\\_in\\_South\\_Korea.php](http://www.gamasutra.com/view/news/172452/Virtual_item_trading_to_be_banned_in_South_Korea.php) [<http://perma.cc/2H4M-265Z>]; Paul Tassi, *South Korea Banning Virtual Item Trading, Botting and Farming*, FORBES (June 12, 2012, 9:52 AM), <http://www.forbes.com/sites/insertcoin/2012/06/15/south-korea-banning-virtual-item-trading-botting-and-farming/> [<http://perma.cc/77SQ-UUVL>].

156. See Mu-hyun, *supra* note 155.

157. Rose, *supra* note 155; Tassi, *supra* note 155.

158. *Virtual Sales Provide Aid to Poorer Nations*, BBC (Apr. 8, 2011), <http://www.bbc.com/news/technology-13012041> [<http://perma.cc/YD3L-WLCA>].

159. Juliet Ye, *Real Taxes for Real Money Made by Online Game Players*, WALL ST. J. (Oct. 31, 2008), <http://blogs.wsj.com/chinarealtime/2008/10/31/real-taxes-for-real-money-made-by-online-game-players/> [<http://perma.cc/3NFK-BC2A>].

160. *Virtual Sales Provide Aid to Poorer Nations*, *supra* note 158.

161. Laura Secorun Palet, *Paid Troll, Gold Farmer, Organ Donator: Now Hiring in China!*, OZY (Sept. 4, 2015), <http://www.ozy.com/acumen/paid-troll-gold-farmer-organ-donor->

questions on whether the Chinese government is actively selling in-game currency and items to U.S. players, and therefore generating U.S.-source income as a result.

As another example, Australia requires taxpayers to include in their income any money they receive from gold farming, and requires an Australian Business Number if a taxpayer earned more than \$50,000 from gold farming in a single year.<sup>162</sup>

## 2. U.S. Taxation

According to the IRS, revenue generated from internet sales is taxable income.<sup>163</sup> Sellers may be liable “for income tax, self-employment tax, employment tax, or excise tax.”<sup>164</sup> Any nonresident alien who generates U.S.-source income above the personal exemption amount must also file a tax return.<sup>165</sup> Furthermore, foreign corporations that engage in a trade or business within the U.S. are also subject to taxation.<sup>166</sup>

Although the U.S. formed a committee to investigate RMT and income from gold farming, there are currently no laws regulating the taxation of RMT.<sup>167</sup> I.R.C. section 63 defines taxable income as gross income less any deductions.<sup>168</sup> Gross income is “all income from whatever

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now-hiring-in-china/40785 [http://perma.cc/87FS-EFJP].

162. Nick Miller, *Virtual World: Tax Man Cometh*, THE AGE (Oct. 31, 2006), <http://www.theage.com.au/news/biztech/virtual-world-tax-man-cometh/2006/10/30/1162056925483.html> [http://perma.cc/VE53-96E9].

163. *Tax Laws and Issues for Online Auction Sellers*, IRS (Oct. 29, 2015), <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Tax-Laws-and-Issues-for-Online-Auction-Sellers> [http://perma.cc/X3HZ-U6KP].

164. *Id.*

165. *Taxation of Nonresident Aliens*, IRS (Nov. 10, 2015), <http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Nonresident-Aliens> [http://perma.cc/4JV9-6SIX].

166. *See* I.R.C. § 882 (2014).

167. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-516, VIRTUAL ECONOMIES AND CURRENCIES: ADDITIONAL IRS GUIDANCE COULD REDUCE TAX COMPLIANCE RISK (2013), <http://www.gao.gov/assets/660/654620.pdf> [http://perma.cc/W5VU-WJTT]; *Gold Farming, Real World Taxation and Regulations*, G2G BLOG, (Feb. 25, 2014), <http://www.g2g.com/blog/gold-farming-real-world-taxation-and-regulations/> [http://perma.cc/FT37-ST3D].

168. *See* I.R.C. § 63 (2014).

source derived.”<sup>169</sup> Although income generated through RMT would be considered gross income under I.R.C. section 61<sup>170</sup> (and thus should be reported as taxable income),<sup>171</sup> similar to selling items through the Amazon Marketplace, it is very difficult to monitor.<sup>172</sup>

a. Companies Engaged in Trade or Business in the U.S.

Non-U.S. corporations are subject to income tax when the income generated by the corporation has some sort of a nexus within the U.S.,<sup>173</sup> or when a company generates Effectively Connected Income (“ECI”).<sup>174</sup> “All U.S.-source active income earned by a non-U.S. person is treated as effectively connected.”<sup>175</sup> To determine whether a company has ECI, we must first determine whether the foreign company is one that engages in a trade or business (“ETB”) within the U.S.<sup>176</sup> As the IRS has provided little guidance on what ETB really means,<sup>177</sup> it is increasingly difficult to

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169. *See id.* § 61.

170. *See id.*

171. *See id.* § 63.

172. *See Tax Consequences of Virtual World Transactions*, IRS (Dec. 2, 2015), <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Tax-Consequences-of-Virtual-World-Transactions> [<http://perma.cc/5V8Q-LJGX>].

173. I.R.C. § 882 (2014); *Doing Business in the United States: A Guide to the Key Tax Issues*, PWC 1 (2014), <http://www.pwc.com/us/en/tax-services/publications/assets/doing-business-in-the-us-2014.pdf> [<http://perma.cc/7YT5-QGMJ>].

174. I.R.C. § 882 (2014); *see also Effectively Connected Income (ECI)*, IRS (May 14, 2015), [http://www.irs.gov/Individuals/International-Taxpayers/Effectively-Connected-Income-\(ECI\)](http://www.irs.gov/Individuals/International-Taxpayers/Effectively-Connected-Income-(ECI)) [<http://perma.cc/X5G3-DA6U>].

175. *See Doing Business in the United States*, *supra* note 173, at 5.

176. *See Effectively Connected Income (ECI)*, *supra* note 174.

177. *See* Kimberly S. Blanchard, *Engaged in a Trade or Business (in the United States)*, BLOOMBERG BNA (Feb. 25, 2011), <http://www.bna.com/engaged-trade-business-n8589934981/> [<http://perma.cc/LL5W-Z3J9>] (“There was a time when most people had a pretty good idea of what ETB meant — it meant you produced widgets, or hung out a shingle as in the case of a commercial bank. But now that most of the widget-producing has moved offshore and the traditional banking business has become fractionalized, specialized, and taken private, the IRS and the tax bar have turned their attention to nontraditional activities, trying to divine what rises to the level of a trade or business and what does not.”).

establish whether the actions of these Chinese gold farming companies fall within the meaning of ETB when they engage in RMT.

Generally, in order for a business to be ETB within the U.S., it must have a permanent location within the country where it operates and conducts its business.<sup>178</sup> As it is unclear whether a company that engages solely in e-commerce and does not have a physical location in the U.S. would be considered ETB within the U.S., foreign companies may easily evade taxation. Therefore, the laws need to clearly state that foreign companies, who direct most of their sales towards and generate most of their income from the U.S. and engage solely in e-commerce, are subject to an income tax for income generated within the U.S. If the U.S. were able to impose a tax on U.S.-source income of the foreign corporation, it would tax the income at the regular U.S. corporate tax rates,<sup>179</sup> currently the highest in the world at 39.1%.<sup>180</sup>

As mentioned previously in Part II.C, Power Leveling Services (“PLS”), a Hong Kong company, has offices in the U.S. and Europe where employees power-level players’ characters.<sup>181</sup> In the case of PLS, because the company has a permanent location within the U.S., it would be considered ETB within the U.S. and have ECI, and therefore would be subject to U.S. corporate income tax. Additionally, if the U.S. has jurisdiction to tax these Chinese companies because they generate ECI, companies will not only face U.S. corporate tax rates, but also state and local corporate taxes.

#### b. U.S. Tax Treaty with China

The 1987 Tax Treaty (the “Treaty”) that the U.S. signed with China undoubtedly could not have anticipated the current status of online transactions.<sup>182</sup> In Article 7 of the Treaty, the U.S. and China agreed that a

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178. See I.R.C. § 882 (2014); *Effectively Connected Income (ECI)*, *supra* note 174.

179. See I.R.C. §§ 11, 882 (2014); *Doing Business in the United States*, *supra* note 173.

180. See Kyle Pomerleau & Andrew Lundeen, *The U.S. Has the Highest Corporate Income Tax Rate in the OECD*, TAX FOUND. (Jan. 27, 2014), <http://taxfoundation.org/blog/us-has-highest-corporate-income-tax-rate-oecd> [<http://perma.cc/FK92-VDC3>].

181. See *World of Warcraft US Power Leveling*, PLS, <http://www.power-leveling-service.us/wow-world-of-warcraft-gold-us-powerleveling.html> [<http://perma.cc/VD6N-N79W>].

182. See United States-The People’s Republic of China Income Tax Convention, U.S.-China, art. 7, Jan. 1, 1987, <http://www.irs.gov/pub/irs-trty/china.pdf> [<http://perma.cc/7QS7-LB72>].

business would be subject to taxation only if the corporation carries on its business through a “permanent establishment situated therein.”<sup>183</sup> With the increasing use of online retailers, it is unlikely that the Treaty’s intention was to leave out such a substantial portion of foreign income generated within the U.S.

With most of China’s \$140 million in RMT sales directed towards the U.S.,<sup>184</sup> it seems unlikely that the U.S. would deliberately give up such a large portion of taxable foreign corporate income. As such, it would be highly beneficial to both the U.S. and China to reaffirm the Treaty with terms more akin to e-commerce enterprise. Similar to the revision of the ECI requirement that a corporation who is engaged in a trade or business within the U.S. be subject to an income tax, the Treaty must also be revised to include language that would explicitly include e-commerce as taxable foreign corporate income. This would prevent companies from exploiting loopholes in a semi-archaic law. Thus, it is clear that our laws must be brought into the twenty-first century.

Again, as with the discussion of ECI above, if Chinese companies have U.S. locations or servers within the U.S., they would satisfy the permanent establishment requirement of the updated Treaty and would therefore be subject to U.S. corporate income tax.<sup>185</sup>

### c. Branch Income

If a non-U.S. corporation has a branch within the U.S., the U.S. can impose a 30% tax on any profits that branch makes on top of the regular corporate income tax.<sup>186</sup> Therefore, assuming that (a) a Chinese gold farming company has ECI to the U.S. and (b) the company would be

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183. *Id.*

184. See *Virtual Sales Provide Aid To Poorer Nations*, *supra* note 158 (calculating that the largest eight Chinese suppliers of game gold have an annual turnover of about US \$10 million each, and sixty other firms each have annual revenues of about US \$1 million); see also Danny Vincent, *China Used Prisoners in Lucrative Internet Gaming Work*, *GUARDIAN* (May 25, 2011, 2:49 PM), <http://www.theguardian.com/world/2011/may/25/china-prisoners-internet-gaming-scam> [<http://perma.cc/Z7ZC-2TZS>].

185. See *United States-The People’s Republic of China Income Tax Convention*, *supra* note 182.

186. I.R.C. §§ 882, 884 (2014); *Doing Business in the United States*, *supra* note 173, at 5–6.

subject to a corporate income tax, the U.S. can also impose a branch tax on any offices the company may hold in the U.S.<sup>187</sup>

If the U.S. is able to clarify and update its tax policies and regulations, there are many opportunities for the U.S. to tax the income of U.S. players, Chinese gold farming, and power-leveling companies not only at the federal level, but also at the state and local levels of government.<sup>188</sup> Moreover, the I.R.S., aided by game developers and companies such as PayPal and eBay, may be able to devise a system that would track “black market” RMT transactions to curb them in the future.

#### d. Compliance

Even if the U.S. government is allowed to impose taxes on foreign companies or on U.S. players, the main problem is compliance. Although the U.S. and China have a tax treaty, it is unlikely (a) that Chinese companies will follow U.S. corporate tax laws, and (b) that the Chinese government would fine or punish Chinese companies for failing to comply.<sup>189</sup> Instead of devising a tax plan that would prevent tax evasion by foreign companies generating income in the U.S., the U.S. has been pushing the Foreign Account Tax Compliance Act (“FATCA”), which would “requir[e] foreign banks to reveal American accounts holding over \$50,000” or face a 30% tax.<sup>190</sup> While the FATCA is very important, the U.S. government must push a similar plan for foreign companies generating e-commerce revenue within the U.S. and who attempt to evade taxation.

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187. I.R.C. §§ 882, 884 (2014); *Doing Business in the United States*, *supra* note 173, at 5–6.

188. See Charlie Kearns, *New York State on Bitcoins: Transactions Are Barter for Sales Tax Purposes; Follow Federal Guidance for State Income Taxes*, SUTHERLAND (Dec. 17, 2014) <http://www.stateandlocaltax.com/policy-and-legislation/new-york-state-on-bitcoins-transactions-are-barthers-for-sales-tax-purposes-follow-federal-guidance-f/> [<http://perma.cc/B7D3-LU5S>] (treating convertible virtual currency as intangible personal property, the transfer of which will be treated as a barter transaction and will be subject to a state sales or use tax).

189. Because the Chinese government itself engages in gold farming, it is therefore unlikely that it would be willing to comply. See Vincent, *supra* note 185 (forcing Chinese inmates to farm gold during imprisonment).

190. Robert W. Wood, *FATCA, IRS Global Tax Law, Is Everywhere—Even in Russia & China*, FORBES (July 1, 2014, 3:17 AM), <http://www.forbes.com/sites/robertwood/2014/07/01/fatca-is-finally-here-even-in-russia-china/> [<http://perma.cc/857Y-PU52>].

### C. Industry Self-Regulation

Some online games, such as WoW, require players to pay monthly subscription fees to have access to the game.<sup>191</sup> As discussed in the above section on closed-flow currency systems in Part II.B, in 2015, WoW introduced WoW Tokens in an attempt to combat gold farming.<sup>192</sup> Players are now able to purchase these tokens directly from the game using real money, which then allows them to purchase in-game currency.<sup>193</sup> Blizzard, the WoW game developer, encourages players to use this exchange system, as opposed to buying through third parties, because it is a safer and more legitimate way to purchase items and gold.<sup>194</sup> Although these in-game micro-transactions may potentially lead to the demise of gold farming,<sup>195</sup> third parties will undercut these transactions and continue selling gold and items. That is, unless WoW or similar games implement prices low enough so gold farmers no longer derive any profit. While some online games require a monthly subscription fee,<sup>196</sup> other games such as Diablo III<sup>197</sup> do not.<sup>198</sup> These free-to-play games make gameplay more accessible to

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191. See *World of Warcraft Subscriptions*, BATTLE.NET, <http://us.battle.net/shop/en/product/world-of-warcraft-subscription> [<http://perma.cc/F3FT-CVAG>] (selling WoW subscriptions in 1 month, 3-month, and 6-month increments).

192. See Melissa Loomis, *Fixing the Economy: How World of Warcraft is Trying to End Gold Farming*, GAME RANT (Apr. 15, 2015), <http://gamerant.com/world-of-warcraft-end-gold-farming/> [<http://perma.cc/494E-LZK5>].

193. See *id.*; see also Blizzard Entertainment, *Introducing the WoW Token*, BATTLE.NET (Mar. 2, 2015), <http://us.battle.net/wow/en/blog/18141101/introducing-the-wow-token-3-2-2015> [<http://perma.cc/3AHH-J6S3>].

194. *Introducing the WoW Token*, *supra* note 193 (“The WoW Token allows players to exchange real money for gold in a secure and sanctioned way—together with the ongoing efforts of our developers, support staff, and anti-hack teams to stop the exploits these companies use and help players who have become victims of their operations, we hope the Token can help make World of Warcraft a safer and more enjoyable game for all of our players.”).

195. See *id.*; see also Loomis, *supra* note 192.

196. See *e.g.*, *World of Warcraft Subscriptions*, *supra* note 191.

197. See Tjwarfle, Comment to *Diablo 3...Is it A Subscription Per Month?*, BATTLE.NET (Apr. 30, 2012), <http://us.battle.net/d3/en/forum/topic/4768329232> [<http://perma.cc/63XW-DKX5>] (rejoicing the fact that Diablo III does not have a subscription plan and is instead purchased for a one-time fee).

198. See *MMORPG Gamelist-All MMO Games*, MMORPG, <http://www.mmorpg.com/gamelist.cfm> [<http://perma.cc/33ZV-MBF4>] (providing a list of free

players who are better able—or more willing—to purchase items and currency in-game, since they will not be paying for gameplay.<sup>199</sup> As with subscription-based games, players initially pay to install the game onto their PCs, along with any expansions the developers release in the future.<sup>200</sup>

In 2012, *Diablo III* introduced a Real Money Auction House (“RMAH”) where players could bid on other players’ items with real money, similar to how eBay is run.<sup>201</sup> Nevertheless, due to the \$250 price cap set by the game developers, players still turned to third-party websites or forums to sell items they believed were worth more than what they were allowed to sell them for in the RMAH.<sup>202</sup> Then, in 2014, Blizzard closed the RMAH, stating that it undermined what the developers deemed the objective of the game: “kill monsters to get cool loot.”<sup>203</sup> Although that may be the objective of the game according to the developers, players are always looking for any advantage over other players to have the items

MMORPG games).

199. See Robert C. Weich III, *Nintendo Mobile Games: Free to Play, but In-Game Purchases Included Too*, LATIN POST, <http://www.latinpost.com/articles/94027/20151111/nintendo-mobile-games-free-to-play-but-in-game-purchases-included-too.htm> [<http://perma.cc/9MSD-JT49>] (reporting that while these games are free to download, they rely heavily on in-game purchases to provide them with revenue).

200. Compare *Diablo III Games*, BATTLE.NET, <http://us.battle.net/shop/en/product/game/diablo> [<http://perma.cc/5E5N-JWHS>] (offering the game for a one-time purchase price), with *World of Warcraft Games*, BATTLE.NET, <http://us.battle.net/shop/en/product/game/wow> [<http://perma.cc/KC5L-6XHN>] (offering the game playable only under a subscription plan).

201. See Blizzard Entertainment, *Diablo III Auction House Update*, BATTLE.NET (May 1, 2012), <http://us.battle.net/d3/en/blog/5270376/diablo-iii-auction-house-update-5-1-2012> [<http://perma.cc/X57M-A985>].

202. See Paul Tassi, *Why Diablo 3’s Real Money Auction House Should Not Be Your Summer Job*, FORBES (June 13, 2012, 10:04 AM), <http://www.forbes.com/sites/insertcoin/2012/06/13/why-diablo-3s-real-money-auction-house-should-not-be-your-summer-job-2/> [<http://perma.cc/W9KC-ZZKB>] (arguing that Blizzard/Paypal’s 15% transfer fee further disincentivizes players from using the RMAH).

203. John Hight, *Diablo III Auction House Update*, BATTLE.NET (Sept. 17, 2013), <http://us.battle.net/d3/en/blog/10974978/> [<http://perma.cc/LD2W-W9HC>]; Lylirra, *Diablo III Auction House Comes to a Close*, BATTLE.NET (Mar. 18, 2014), <http://us.battle.net/d3/en/blog/13354139/diablo-iii-auction-house-comes-to-a-close-3-18-2014> [<http://perma.cc/B4CT-49MQ>]; Lylirra, *Diablo III Auction House Update FAQ*, BATTLE.NET (Mar. 13, 2014, 3:47 PM), <http://us.battle.net/d3/en/forum/topic/9972208129> [<http://perma.cc/YMB7-VXHR>].

necessary to fight the best monsters and to collect the best items that drop once these monsters are defeated. Therefore, without a controlled RMAH, players will still turn to third parties to purchase better items and more gold.

One possible non-tax solution to the problem of gold and item farming is to make items and gold that drop from completing tasks (e.g., killing monsters) bound to players, and essentially untradeable. There are three different types of bound items: Bind on Pickup (“BoP”), Bind on Equip (“BoE”), and Bind on Account (“BoA”). Items that are BoP are bound to the character once they are picked up after being dropped from killing a monster.<sup>204</sup> BoE items, on the other hand, only bind to characters once they are worn or used by a character, such as a piece of armor or a weapon.<sup>205</sup> BoA items are the least restrictive because they may be transferred between different characters on the same account.<sup>206</sup>

If players are unable to trade their items, the market for selling gold and in-game items will come to a screeching halt. Although Diablo III has attempted to implement a similar solution by binding items to players’ accounts after two hours, players seem to find a way to bypass this new restriction.<sup>207</sup> For example, Chinese companies now provide U.S. players with assisted gameplay services.<sup>208</sup> Using a third party website, players can pay other players to either play their character for them, or to play with them using a higher level character—much like virtual mercenaries—and trade the items that drop.<sup>209</sup> Furthermore, players are still able to go

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204. *Bind on Pickup*, WOWWIKI, [http://wowwiki.wikia.com/wiki/Bind\\_on\\_Pickup](http://wowwiki.wikia.com/wiki/Bind_on_Pickup) [<http://perma.cc/M67T-JTJR>].

205. *Bind on Equip*, WOWWIKI, [http://wowwiki.wikia.com/wiki/Bind\\_on\\_Equip](http://wowwiki.wikia.com/wiki/Bind_on_Equip) [<http://perma.cc/QE3A-K5B6>].

206. *Bind to Account*, WOWWIKI, [http://wowwiki.wikia.com/wiki/Bind\\_to\\_Account](http://wowwiki.wikia.com/wiki/Bind_to_Account) [<http://perma.cc/8Z95-3HYJ>].

207. *Playing with Friends: Trading*, BATTLE.NET, <http://us.battle.net/d3/en/game/guide/gameplay/playing-with-friends#trading> [<http://perma.cc/HP7G-MF8T>].

208. See, e.g., AdamR1028, (*S4 Demon 50+ Legendary Set Unidentified Items, T8 Rifts, GRifts, US/SEASON 4*, PLAYERAUCTIONS (Oct. 21, 2015, 10:37 AM), <http://www.playerauctions.com/offer/s4-demon-50-legendary-set-unidentified-items-t8-rifts-grifts-us-season-4-113197065/> [<http://perma.cc/ZA6F-FYW5>] (offering services to handplay a character without the use of bots or automatic programs).

209. See *id.*

directly to gold farming websites and purchase gold farming services.<sup>210</sup> Similar to services offered by individual players, these farming websites charge fees to farm gold while playing your character.<sup>211</sup> In this scenario, players and farmers are now selling their services, similar to power-leveling, and not in-game items or gold. Although players may still exploit the system, many are upset that Blizzard is restricting their ability to trade unwanted or unnecessary items with friends who would have otherwise benefited from these items.<sup>212</sup> As a completely BoA system would greatly restrict cooperative gameplay, developers would likely lose many players. Thus, a completely BoA system would likely be more financially detrimental to the developers than allowing players to trade and engage in third party RMT.

Furthermore, similar to power-leveling services, assisted gameplay raises complex issues of taxation on services. Leveling another player's character or aiding the player in completing a quest or a boss fight is a service and not a good that can be subjected to a sales tax. Therefore, even if a sales and use tax were to be implemented on the sale of virtual currency and in-game items, these services would be left out of such a tax. As such, each state would have to individually decide whether this type of service would fall into their individual lists of taxable services. If decided in the affirmative, states would need to then decide how they would tax such transactions. This potentially poses a different issue altogether as the services are being provided by foreign companies.

A final solution may be for game developers, who allow players to trade items, to trace the movement of items known to have high real world value. Although this may be difficult to implement, it may be helpful not only to game developers to more easily implement their EULA and protect their intellectual property, but also to the IRS if the game developers could report suspicious activity, such as high volume transfers from specific characters they can flag as gold farmers.

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210. See e.g., DIABLOIIIGOLD.COM, <http://www.diabloiiigold.com/> [<http://perma.cc/4L4E-LNH9>].

211. *Id.*

212. See EPICTBROWN, *Bind on Account*, BATTLE.NET (May 25, 2014), <http://us.battle.net/d3/en/forum/topic/12946644852#1> [<http://perma.cc/PYM8-D9MS>] (complaining about BoA); AlbertE, *Bind on Account Needs to Go*, BATTLE.NET (Mar. 2, 2014), <http://us.battle.net/d3/en/forum/topic/11914281694> [<http://perma.cc/P3LM-GF96>].

## V. CONCLUSION

There is a moral and ethical problem with the way online games are evolving. The world is not fair and just, but games are supposed to be. Unfortunately, for-hire virtual mercenaries and gold farmers are making the gaming environment like the Wild West, where those with money win. As demonstrated in this Note, both players and gold farmers always seem to find ways to manipulate gameplay, and the system, to profit from other players who are willing to spend money to better their characters and accounts with little effort.

Although difficult, and possibly intrusive, the U.S. may attempt to regulate the ever-growing “black market” of RMT. Another possible solution is to engage in drafting U.S. and U.S.-International tax legislation that would encompass these transactions. Unfortunately, because the U.S. does not have jurisdiction over most Chinese companies, taxation of RMT will not deter gold farming companies from engaging in RMT, as they would not be subject to any U.S. or U.S.-International tax legislation. Furthermore, even those players who are taxable under U.S. jurisdiction may still evade relevant tax laws. Thus, the IRS will likely benefit from a partnership with high volume game developers, such as Blizzard, to develop a system of accountability where gold and items transferred between characters are closely monitored and reported, especially transactions between international and U.S. players.