

The Reality of Virtual Worlds

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Just when you thought you had conquered the BlackBerry, and finally understood blogs, podcasts and blooks, along come virtual worlds and avatars. If you have not heard of a virtual world or an avatar, you soon will and, in fact, may find yourself participating in the very near future. Are virtual worlds and avatars here to stay or are they simply the latest craze? No one knows, but the indication is that they are making their way into the mainstream and are being taken seriously by large corporations and the legal system.

A virtual world is a computer-based, simulated 3-D environment in which users may interact. An example of a virtual world is Second Life which may be accessed at www.secondlife.com. Second life is created entirely by its participants who literally may live a second life through virtual interaction via avatars. Avatars are digital characters created by a participant in a virtual world. Originally created by video game developers, avatars were initially cartoon-like representations of the person participating in the online games, which were set in various time periods such as medieval times or the future. The games consisted of players acquiring virtual world (also known as "in-world") resources through the use of skill and, at times, weapons. The new offshoots of these online games are the social interaction virtual worlds such as Second Life where avatars simply "hang out" with other players for the social experience. Today in virtual worlds, an avatar may resemble the person behind the avatar, or bear no resemblance at all. Avatars relate to one another through online chat or instant messaging software which provides a sense of realism. Chat occurs in multiple languages and devices may be acquired to translate from one language to another. Second Life consists of towns, islands, beaches, ski slopes and other locations. Avatars are able to sit, walk, dance, fly and engage in other real world activities.

The interactions in virtual worlds are very much like the real world; thus, many legal and regulatory issues may arise. Avatars may form friendships, purchase products and land, go on a vacation or transact business. Internet sites such as eBay trade in-world property for real world money. Some participants even earn their real world livings through buying and reselling virtual world assets. Second Life has created its own currency called the "Linden" (named after creator and operator Linden Research). Participants may buy and sell Lindens for U.S. dollars and other currencies. The Linden value ranges between 250-300 Lindens to the U.S. Dollar. Lindens may be used in-world to purchase products, property or services for their avatars. In-world lenders will loan money for purchases and software may be purchased to enable construction of buildings on property owned in-world. This creates an active, in-world economy. Participants may sell their Lindens back to Second Life for cash or sell them in other internet markets. An Internet search of the term "Linden" reveals various sites offering exchange rates valuing the Linden against multiple currencies. Concerns have been expressed, however, about in-world money affecting the real world money supply and the economy.

Virtual worlds are generating real world news through articles in the *New York Times*, *Wall Street Journal* and, recently, discussion on *The Daily Show with Jon Stewart*. Early in April 2008, congressional hearings were held on Online Virtual Worlds: Applications and Avatars in a User-Generated Medium. Witnesses, including the founder of Linden Research, testified on the evolution, culture and future of virtual worlds. Jon Stewart spotlighted the hearings on *The Daily Show* saying "It is now official – Congress has given up on the real world." The hearings were broadcast live in Second Life with a room full of avatars in attendance. Also, last fall the American Bar Association formed the Virtual Worlds and Multi-user Online Games Committee, which is a committee of the Science and Technology Law Section, to monitor and participate in the development of the law of virtual worlds. The committee is developing a facility for meetings to be held in-world.

Additionally, a number of foreign law firms have opened offices in Second Life. It appears that a few have attempted to practice law there and claim to be performing real life legal functions. One law firm claims that clients with injuries that make it difficult for them to meet in person or clients that are too busy find Second Life as a way of "meeting" their attorney and receiving advice without visiting the office. A recent ABA Journal cover story discussed the fact that such activities present potential ethics pitfalls for American lawyers; however, there already is a Linden Bar Association (named after the currency in use in Second Life) which claims both lawyers and law students as members. The group organizes lectures in-world and shares information about operating systems and legal related topics. In December 2007, Judge Richard Posner of the Seventh U.S. Circuit Court of Appeals made a guest appearance on Kula Island in Second Life to talk about a recent book he wrote which addresses civil liberties. Judge Posner's avatar resembled him and his avatar's face was designed using real life photos. At the end of his presentation, Judge Posner autographed virtual copies of his new book by mouse-clicking on a table next to his avatar, which created a copy of his signature to appear on book copies onscreen. Avatars stood in line to obtain the autograph.

The existence of real world companies in Second Life is the greatest indication that Second Life is more than a game. Companies such as Coca-Cola, IBM and Toyota have established presences and are advertising in virtual worlds. They conduct marketing campaigns, recruit and interview potential employees and sell their virtual products. In another virtual world known as there.com, Coca-Cola has established an island shaped like a Coke bottle where participants may hang out or shop for Coca-Cola products such as clothing and accessories for their avatars using reward points obtained from codes on Coke bottle caps. This brings the real world, where people are consuming products, together with the online world. Also, H&R Block recently opened H&R Block Island in Second Life where real world tax professionals are available in avatar form to answer tax questions free of charge.

The most significant developments indicating that virtual worlds are here to stay are the growing number of users of virtual worlds, including children. The question of whether this development is good for society is a topic that is outside the scope of this article; however, with children being introduced to virtual worlds at an early age, the potential for continued use throughout life increases. Children's sites include Disney's Club Penguin, which had approximately 4 million visitors in November 2007, and Webkinz with over 7 million visitors in November 2007. Webkinz allows kids to care for virtual pets, answer trivia, earn KinzCash and play kids games online. As of now, there are no advertisers on these sites and the content is paid for by subscriptions to Club Penguin and through the purchase of stuffed animals for use on the Webkinz site.

The number of users of virtual world sites among adult populations is also growing. It is reported that over 650,000 people visited Second Life in February 2008, with Second Life claiming to have over 13 million total residents (avatars), 40,000 of which are online and in-world at any given time. The online game World of Warcraft claims a subscriber base of over 10 million. When the marketplaces for assets related to online games and virtual worlds are combined, a real world market exists which is estimated to constitute nearly a billion dollars annually for the trading of virtual assets.

It is becoming clear that virtual world activities may equate to real world legal proceedings. Second Life has established policies that protect ownership of land and other types of property including intellectual property. An End User License Agreement (EULA) generally governs ownership issues and Second Life's EULA contains an arbitration clause. Recently, a participant in Second Life brought an action in a federal district court in Pennsylvania against Linden Research and its owner relating to the seizure by Linden of all virtual property owned by the participant in Second Life claiming that the participant had improperly purchased the property. The court refused to enforce the arbitration clause in the EULA based on adhesion and asserted jurisdiction. Moreover, Second Life has become prime ground for trade in infringing and counterfeit goods and trademark owners need to be vigilant in protecting their trademarks. In October 2007, six Second Life content creators sued another participant in a federal district court in New York alleging trademark and copyright infringement based on the defendant duplicating and selling copies of the plaintiffs' clothing, body forms, furniture and other items. The dispute was settled. A third case arose recently in Tampa over the theft of virtual toys, and resulted in a real life penalty. A Texas man was accused of stealing toys developed for use in Second Life. A settlement was accepted by the federal district court whereby the Texan agreed not to copy, display or distribute any items sold by the Tampa-based company. The settlement did not involve money damages or any admission of wrongdoing, but it appeared to transfer real world legal principles to the online world.

But should real world principles be applied to in-world disputes or should virtual worlds create their own distinct legal systems? The jurisdictional issues related to applying real world laws are extremely complex; however, applying historical legal concepts provides consistency and predictability for participants. It is likely that more courts will be dealing with activities that occur within virtual worlds, thereby providing the potential for expansion of our real and personal property, intellectual property and tax laws to name only a few. The manner in which our legal system will deal with these issues is only beginning to evolve. As an owner of intellectual property, you may need to police your rights in-world as you do in the real world. At least now, you have basic information about the reality of virtual worlds.

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