Virtual Worlds, Digital Economies, 
And Synthetic Crimes

by Sean F. Kane

No one can know exactly how courts will deal with the issues, but make no mistake: virtual world activities have real world consequences.

TODAY’S VIRTUAL WORLDS—sometimes also called digital or synthetic—evolved from text-based role playing games such as Dungeons and Dragons. The predecessors of the Massively Multiplayer Online games (“MMOs”) of today began for the most part in the late 1970s and early ’80s when various individuals like Richard A. Bartle, co-author of MUD, the first multi-user dungeon, engaged in the role-playing game behavior online. The online text-based commands and prompts used allowed the players to act out various fantasies without the close proximity requirement which was inherent in the earlier written and oral role-playing gaming forms. As the online technology grew, so did the nature and complexity of the interactive games, including the addition of videogame graphics to the text-based game elements. In the ’90s the current state of online MMOs began offering a real-time socially interactive component that was not available on traditional offline console game. While the physical space and landscape is simulated in the virtual environment of today, the social interactions are for the most part real since virtual characters or “Avatars” in the digital world are generally controlled and operated by a real person and not just by strict computer code. Although

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these games are currently used mostly as an avenue for play and social interaction, if the proliferation of online entrepreneurs and real world businesses opening virtual world counterparts continues, the games will likely be more focused on commerce, research, and work or work-related activities.

The original virtual worlds were built by private gaming companies for their subscriber base and were fully controlled by the designers (the so-called game gods) and their all-encompassing End-User Licensing Agreements (“EULAs”). These agreements detailed the rights and obligations that the players were subject to if they wished to play in the particular virtual world. As discussed below, as new MMOs emerge some of these licensing agreements have become less encompassing and the individual players are gaining more and more rights that will lead to some very interesting Intellectual Property (“IP”) issues.

In the last few years, MMOs have exploded in usership with some reports stating that 100 million people worldwide are logging on to play in one of the various digital worlds. Examples of some of these worlds include *The Sims*, *Second Life*, *City of Heroes*, *There.com*, *World of Warcraft* and *Everquest*. These and other digital worlds can run the gamut from pseudo-Tolkein medieval-Arthurian to more realistic depictions of the modern everyday experience. What they all have in common is that they were designed and programmed to promote social interaction of the various players. The application and use of real world physical laws by game designers to create a three-dimensional landscape which persists and develops whether or not any particular gamer is playing reinforces the sense that the virtual world is a dynamic real place. A vast majority of the players spend a considerable amount of time engaged in game play. In fact, some statistics state that between 20 and 30 million regular participants in the virtual world are so involved in game play that they spend more time in the digital society then they do at their jobs or engaged in other real world activities. A South Korean man, who quit his job to have more time to play games, actually died on August 6, 2005 of heart failure due to exhaustion after playing an online battle simulation game for 50 hours only stopping for short respites to use the bathroom and take brief naps. United States citizens make up about half of the subscribers in the virtual worlds, with Asian countries accounting for a majority of the remainder. In fact, differing reports claim that from 10 to 40 percent of the South Korean population plays an online game with some frequency. The gamers work, play, and interact with other individuals from around the world without ever needing to leave the computer. It is likely that the type of information discussed above was what led the Hon. Richard Posner to recently comment that legal scholars would do well to study the issues surrounding videogames. Moreover, on December 7, 2007, Judge Posner gave a talk via an Avatar (referenced below) in the game *Second Life*.

**VIRTUAL ECONOMY** • The majority of online games do not have a distinct win-or-lose scenario; instead, they are designed to allow for gamers to build up their Avatars in the virtual society by earning virtual currency and developing skills, so-called leveling up, that make the character more powerful. Property, both real and personal, can be purchased or created in the virtual world and used by the Avatars. As such, the virtual world society works much like that of a real world society. However, since certain gamers do not wish to invest the time and effort necessary to create a character and build up...
the level of wealth and status that the game makes available after many hundreds of hours of play, a secondary market has arisen to cater to these individuals. Many gamers have begun to sell their digital goods, property, or Avatars for real world money on IGE, eBay, and other similar eCommerce Web sites. In certain cases, these items have sold for significant sums as demonstrated by a virtual island which sold in Project Entropia for $30,000, a virtual representation of Amsterdam in the game Second Life which sold for $50,000, and a virtual space station which also sold in Project Entropia for $100,000. Some research has stated that last year alone approximately $1 billion has traded hands as part of this secondary market. Moreover, the amount of IP value that exists within these virtual worlds which has not been offered for sale is really quite vast and is only continuing to grow. For those who dispute the value of online digital property, consider that in reality most individuals’ wealth is not in the physical form of a pile of hard currency but in digital form existing within the servers of a bank, brokerage house, or other financial institution. With this in mind, the leap to virtual wealth is not a difficult one to make.

The Digital Sweatshop

A few years ago the BBC published an article under the headline Virtual Kingdom Richer than Bulgaria. The basis for this article was that the per capita gross national product of Avatars within a realm in the game Everquest was higher than the average income of a citizen in certain Eastern European countries. Virtual entrepreneurs have noted this and attempted to cash in on it in various ways, including by setting up digital sweatshops where third-world laborers play online games around the clock obtaining and creating virtual avatars, properties, and goods that can then be sold for real world cash. The legality of such action is being raised in the recent United States District Court for the Southern District of Florida putative class action Antonio Hernandez, Individually and on behalf of all others similarly situated v. Internet Gaming Entertainment and IGE U.S. LLC, Case No. 07-21403-Civ-Cohn/Snow. The argument being raised is that IGE and other “gold farmers” act against the terms and conditions specified in the EULA and Terms of Use from the game World of Warcraft, which specify that the user may not sell items for real money outside of the virtual world. The plaintiff claims that IGE has sold virtual gold for millions of dollars, and that the amount of gold on sale is such that it creates a tangible economic damage to so-called honest players because it devalues their currency and their own efforts, it reduces the amount of virtual goods available to them, and it also places their characters at a disadvantage because they are not willing to purchase items through the farming system.

Real Services For Digital Currency

Other individuals and entities have created what some may consider more respectable virtual businesses offering products or services to the digital community in exchange for payment in digital currency. Some examples of the most popular and successful businesses are Avatar clothing designers and Avatar entertainment complexes offering anything from games of chance to virtual skydiving. One such digital clothing designer was even asked to present her designs at an Italian fashion show. From these humble origins, virtual world business has blossomed to include the virtual world presence of such blue-chip companies as IBM, General Motors, Toyota, CBS, Dell, Cisco Systems, and Sun Microsystems. Moreover, American Apparel, Reebok, and Starwood Hotels are offering their products and services for sale to the virtual public. These virtual transactions are being covered by the Reuters Group as part of its virtual world news bureau.

Converting Virtual Currency To Cash

As already stated, some individuals do not play games for their virtual opportunities, but as a way...
to make money in the real world. Individuals and virtual businesses in the past were able to convert their digital earnings into real cash through Web sites like www.GamingOpenMarket.com which allowed virtual currency arbitrage trading, converting digital currency to United States cash at the prevailing rate in the same manner that an international currency exchange would. (As of the publication date, the Web site was not operative). Additionally, certain virtual worlds like Second Life have in-game virtual monetary exchanges. Moreover, Web sites like www.ige.com allow players to trade in virtual goods and currency for real world money.

**What Legal Standards Apply To The Virtual World?**

Since intangible IP of all kinds has real world value and can be relatively easily converted, the question arises as to what legal standard should be applied to the virtual world. The growing commercialization of the virtual world will inevitably subject it to real world laws and regulations as players seek protections for their valuable IP. If virtual world currency and goods being traded have a real world value, won’t the courts and government eventually step in to protect and regulate these digital assets? Congress recently announced the intent to investigate whether virtual world property should be subject to taxation. At this time, no resolution on this issue has been announced. The answer to this and other issues will potentially depend on whether a player is allowed ownership of an item obtained or created in the virtual world. Certain proponents of ownership argue that allowing creator ownership of virtual property will foster creativity, which is the protectable interest copyright protection was first enacted to ensure. Others say that judicial determination of the ownership of a virtual “Bone Crusher Mace” is a waste of the court’s valuable time.

**Are There Ownership Rights In Virtual World Possessions?**

Although the U.S. courts have not yet provided a virtual property ownership standard to follow in this regard, a lawsuit against Second Life creator Linden Lab over a virtual property deal that went bad, was decided in May 2007. See Bragg v. Linden Research, Inc., 487 F. Supp. 2d 593 (E.D. Pa. 2007). The court denied the motion of one of the defendants to dismiss for lack of jurisdiction, finding that that defendant’s activities in inducing users to participate in the virtual real estate market provided sufficient minimum contacts for personal jurisdiction. (The defendants’ arbitration agreement was also found to be unconscionable.) Other previous cases involving virtual worlds settled or were abandoned before the creation of any new legal precedents. However, there is some international case law that has determined that individuals have rights in their virtual world possessions. In China in 2003, a court ruled that a game developer had to compensate a player after a hacker broke into his virtual account and stole his digital currency and property. If the United States chose to follow this theory it could lead to some very interesting queries, including the following:

- If virtual property has real world value, could a game designer be held liable for destruction of property if they pulled the plug on a game due to business or monetary issues without proper compensation to the gamers?