

Real IP Issues In Virtual Worlds: How IP In Second Life Affects Your Clients' IP In Real Life

Introduction to Virtual Worlds
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Far removed from the video games played on a television through consoles such as the Super Nintendo or Sony PlayStation, a new breed of electronic entertainment has emerged. Typically played from a home computer over the Internet, users interact with each other in vast expanses known as virtual worlds. These virtual worlds are capable of hosting thousands upon thousands of users online at one time, in a real time, interactive, three-dimensional environment.

User-generated content is a common aspect of these games, the most important content arguably being the avatar.² An avatar is the personal representation of the user within the virtual world, and these can be as constraint-free as the program itself. An avatar can be anything from an accurate virtual projection of the user to complete fantasy. The build, gender, race, age or even species of the user need not be accurately reflected in the avatar.

Many virtual worlds are “persistent game worlds,” where activities within the world and of other players continue, even when a user is not online. Much as the real world continues while you sleep, these virtual worlds continue when you log off of your account. Users can spend as much or as little time as they like in these applications.

A slew of online virtual worlds await potential users. One of the most famous and highly populated virtual worlds is the massive multiplayer online role playing game (MMORPG) *World of Warcraft*, where users take on the role of fantasy-type characters, either good or evil, and participate in quests, battles and the like.^{3 4} MMORPG games such as *World of Warcraft* are

typically goal-oriented. The social benefits of these games are not necessarily the main reason users play them, so much as the teamwork, adventure and escapism.

In addition, over hundreds of thousands of people have joined the fantasy virtual world game *Entropia Universe*, where gamers take residence in a colony on a distant planet infested with robots and monsters.⁵ Virgin is currently developing *A World of My Own*, which is in beta testing and will focus on 3D online game play, as opposed to being purely a social or strategy oriented program.⁶ *Whyville* is more cartoonish, is geared towards children, and is primarily educational.⁷

Perhaps the most ubiquitous virtual world, at least in terms of media exposure⁸, is Second Life.⁹ This is by no accident, as Second Life boasts just under thirteen million residents¹⁰, though the number of actual residents actively playing at any given time has been reported as being approximately 40,000.¹¹ Additionally, not everyone who creates an avatar or opens a Second Life account returns with any regularity, or at all, after the first visit(s).¹² The increase in the number of Second Life accounts has been almost exponential nonetheless, with only 100,000 registrations in December 2005, followed by 1,000,000 in October 2006 and 8,000,000 in July 2007.¹³

Some virtual worlds, such as *Active Worlds*¹⁴ and *There*¹⁵, are heavily regulated, monitored or otherwise censored by administrators to maintain a PG-13 atmosphere. Second Life users generally enjoy far greater freedom, and are governed by a Terms of Service agreement.¹⁶ The Terms of Service defines the relationship between the user and Linden Lab¹⁷, a privately held company based in San Francisco that created and operates Second Life. This agreement is particularly notable in that the rights to all intellectual property created by the user stay with the user.

Second Life is not only a social networking virtual world, but contains a fully functioning economy.¹⁸ The LindeX currency exchange market allows residents to convert their dollars to Lindens (L\$), which averages about 265 L\$ to 1 \$US.¹⁹ Residents can make and sell their own inventions, designs or other creations, all transferable to other users for Lindens. Besides residents, real world companies have opened store locations within Second Life, selling virtual versions of their tangible wares. In addition to in-game material goods in commerce, there are destinations, for example a virtual Crowne Plaza Hotel.²⁰ IBM is one of many corporations that opened a business and meeting center, where consumers can interact in-world with customer service representatives.²¹ In essence, companies are taking advantage of the consumer aspect of Second Life, not necessarily because of the in-world profits, but because of the additional marketing presence Second Life provides.²²

Real Life problems and legal issues have also found their way into Second Life. For example, is a Second Life resident, married in Real Life, who then marries (in-game) and carries on a physical relationship (also in-game) with another Second Life resident for hours upon hours each day an unfaithful husband?²³ Is pedophilia between avatars illegal, if the game ‘children’ avatars participating in the acts are actually adults playing a fantasy role of children?²⁴ Is gambling in Second Life illegal, and would U.S. prosecutors have jurisdiction if it is not?²⁵ Are earnings in Second Life by U.S. residents subject to federal income taxes?²⁶ Are those earnings in Second Life taxable only when the resident converts Lindens to U.S. Dollars?²⁷

A federal lawsuit was filed against Linden Lab over a taking of land within Second Life, and the District Court, in denying a motion to dismiss for lack of personal jurisdiction and to compel arbitration, noted that “[w]hile the property and the world where it is found are ‘virtual’, the dispute is real.”²⁸ Indeed, Second Life has reached such prominence that Judge Richard

Posner, of the U.S. 7th Circuit Court of Appeals, participated in a town hall style question and answer session with residents on a myriad of issues, including land, intellectual property and commerce.²⁹

Concerns regarding intellectual property are among the many legal issues emerging in Second Life. A program known as CopyBot undermined the creator-oriented intellectual property ownership, as it permitted the operator to copy, without permission, the ‘wares’ of another resident.³⁰ In-world protests followed, and Linden Lab was forced to address the issue, first by decreeing that using CopyBot was a terms of use violation, and then by taking steps to disable the program in the future.³¹ Second Life responded to copyright concerns by implementing a new click-through user agreement and copy protections on user-created items.

Another lawsuit, related to intellectual property within Second Life, alleged the misappropriation of the plaintiff’s copyrighted and trademarked virtual sex toy by the defendant.³² The case recently settled before the district court could reach any substantive rulings on the merits.³³

Other issues related to intellectual property in virtual world arise. What court would have jurisdiction over a dispute between two users, or between a user and a service provider? In the event of a dispute between a user and a service provider, can the service agreement or license agreement restrict or eliminate claims by the user? When a company decides to enter a virtual world marketplace, what considerations and safeguards should that company employ? What if that company is entering a virtual world where its intellectual property has already been diluted or otherwise damaged in world, and what steps should be taken by that company to restore its brand image? These issues and others will be more thoroughly discussed in the presentations and papers by the panel.

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- ² See Woodrow Barfield, *Intellectual Property Rights in Virtual Environments: Considering the Rights of Owners, Programmers and Virtual Avatars*, 39 Akron L. Rev. 649 (2006) (arguing for expanded rights for avatars in virtual world as the capabilities of avatars grows).
- ³ World of Warcraft website: <http://www.worldofwarcraft.com>
- ⁴ Unless otherwise indicated, all web sites referenced herein were accessed and working as of March 25, 2008.
- ⁵ Entropia Universe Website: <http://www.entropiauniverse.com>
- ⁶ A World Of My Own Website: <http://www.awomo.com>
- ⁷ Whyville Website: <http://www.whyville.net>
- ⁸ Linden Lab: News Archive: <http://lindenlab.com/pressroom/news>
- ⁹ Second Life Website: <http://secondlife.com>
- ¹⁰ Second Life FAQ: <http://secondlife.com/whatis/faq.php#03>
- ¹¹ CNN Enters the Virtual World of Second Life, CNN.com Online / Technology, November 12, 2007: <http://www.cnn.com/2007/TECH/11/12/second.life.irpt/>
- ¹² Second Life User Numbers Don't Quite Add Up, Foxnews.com, Science & Technology, May 3, 2007: <http://www.foxnews.com/story/0,2933,269690,00.html>
- ¹³ Fact Sheet: What is Linden Lab?: <http://lindenlab.com/pressroom/general/factsheets/lindenoverview>
- ¹⁴ Active Worlds Website: <http://www.activeworlds.com>
- ¹⁵ There.com Website: <http://www.there.com>
- ¹⁶ Second Life Terms of Service: <http://secondlife.com/corporate/tos.php>
- ¹⁷ Linden Lab Website: <http://lindenlab.com>
- ¹⁸ Second Life: It's not a Game, CNNMoney.com / Fortune, January 23, 2007: http://money.cnn.com/2007/01/22/magazines/fortune/whatsnext_secondlife.fortune/index.htm
- ¹⁹ LindeX Market Data: <http://secondlife.com/whatis/economy-market.php>
- ²⁰ Crowne Plaza's Second Life Meeting Room Website: <http://www.secondlife.crowneplaza.com/>
- ²¹ IBM Real Business in 3D: <http://www.ibm.com/virtualworlds/businesscenter/>
- ²² See Mark Bartholomew, *Advertising in the Garden of Eden*, 55 Buffalo L. Rev. 737 (December 2007) (arguing that unchecked advertising in Second Life could ruin an otherwise pristine landscape, and urging ad-free areas). A contentious issue in Second Life is the emergence of 'Ad Farms', which are nothing more than tall billboards on otherwise barren parcels of property, where these billboards obstruct or otherwise ruin an ideal in-world view.
- ²³ *Is This Man Cheating on His Wife?*, Wall Street Journal Online, August 10, 2007: <http://online.wsj.com/public/article/SB118670164592393622.html>
- ²⁴ *Pedophile Playground Discovered in Second Life Virtual World*, Foxnews.com Science & Technology, November 2, 2007: <http://www.foxnews.com/story/0,2933,306937,00.html>
- ²⁵ *Second Life Bans Gambling*, ABC News Technology & Science, August 2, 2007: <http://i.abcnews.com/Technology/wireStory?id=3438941>
- ²⁶ *Second Life's Looming Tax Threat*, CNNMoney.com, March 9, 2007: http://money.cnn.com/2007/03/02/technology/sl_taxes/index.htm
- ²⁷ See Bryan T. Camp, *The Play's the Thing: A Theory of Taxing Virtual Worlds*, 5 Hastings L.J. 1 (November 2007) (arguing that an income tax should only be applied when resident transfers the in-world money to U.S. Dollars).
- ²⁸ *Bragg v. Linden Research, Inc., et al.*, 487 F.Supp.2d 593,595 (E.D. Penn. 2007).
- ²⁹ *IP's Brave New World*, Law.com, February 1, 2007: <http://www.law.com/jsp/article.jsp?id=1170237755271>
- ³⁰ *Second Life Will Save Copyright*, Wired.com Commentary, November 20, 2006: <http://www.wired.com/gaming/virtualworlds/commentary/circuitcourt/2006/11/72143>
- ³¹ *Second Life Faces Threat to its Virtual Economy*, cnet News.com, November 15, 2006: http://www.news.com/2100-1043_3-6135699.html
- ³² *Eros, LLC v. Leatherwood, et al.*, Case 8-07-cv-01158-SCB-TGW, M.D. Fla., Filed October 24, 2007.
- ³³ *Virtual Sex Toy Thefts Result in Real-Life Court Settlement*, Foxnews.com, March 21, 2008: <http://www.foxnews.com/story/0,2933,340469,00.html>