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Virtual Property in Virtual Worlds

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Massively multiplayer online role-playing games (MMORPGs) are virtual worlds in which players act as inhabitants and band together to engage in immersive online entertainment. Virtual worlds are not only entertainment but also viable business opportunities. In 2001, the gross domestic product of the popular MMORPG, World of Warcraft was calculated to be US\$2,266 per capita.

For a virtual world to succeed as a “parallel universe” in which people can live second lives, and in which an economy can exist, there must be points of exchange with the real world. A popular business model has emerged in the virtual world that mirrors one of the world’s most traditional forms of conducting business: selling wares. Most virtual worlds allow users to generate content that can be used in the game. User-created content in Linden Lab’s 3D virtual world, Second Life not only enables users to interact (as avatars) but also includes built-in tools to help them create any manner of virtual objects. These objects, which account for over 99 per cent of in-game virtual items, can then be traded for “Linden dollars,” which can in turn be exchanged for U.S. currency. In 2008 alone, such transactions generated US\$100 million. However, there are risks in operating in a virtual world. For example, a game user’s account

may be hacked, and all his or her items cleaned out. Also, a user may copy a virtual item created by someone else for his or her own personal trade. Whenever a person’s investment of time and money is vulnerable to risks like this, it is best to guard against them. However, virtual property has yet to be recognized by the courts as legally enforceable. As a result, the governance of rights in virtual assets is limited to intellectual property and contract law.



Within virtual worlds, there are three possible levels of “property”:

- 1. First level:** At its core, all virtual property is ultimately computer code, which is protected by copyright law.
- 2. Second level:** Items in the virtual world – avatars, swords, clothes, buildings, etc. – are the virtual world’s equivalent of the same property items in the physical world.
- 3. Third level:** It is possible that the in-game virtual property itself is a form of intellectual property. For example, an in-game book is both a “physical” item of property, but also represents a “tangible” representation of the copyright in that book. Another example would be the creation of a clothing line in a virtual world: in such a case, there could be intellectual property rights in the form of designs or trade marks inherent in the clothes, while someone also could “own” the physical embodiment of the items of clothing in that line. However, as in the real world, intellectual property rights would not exist for every object.



Virtual worlds are consensual creations. No one is forced to play the video games in which they have a virtual existence, and those who choose to play must accept the terms of use set by the game service provider. Currently, the terms of service set out by most of the major service providers asserts their ownership of all property, whether virtual or intellectual, that is submitted to their virtual worlds.

The terms of use also protect the intellectual property rights of the providers’ software, as well as their trade marks.

In Linden Lab’s Second Life, however, the terms referring to a user’s intellectual property rights are different. In late 2003, Linden Lab changed its terms of service to allow its users to retain intellectual property right, if any, in their virtual creations. However, because these creations must be copied, communicated and reproduced on the company’s servers, and on the screens of any Second Life user who comes across them, the rights are licensed to Linden Lab for use in the game. As a result, users of Second Life retain third- but not second-level intellectual property rights.

The legal power of intellectual property rights in Second Life was put to the test in a U.S. court in a copyright and trade mark infringement claim by a successful Second Life business, Eros LLC. In *Eros LLC v. John Doe*, Eros sued John Doe for making and selling unauthorized copies of Eros’s “adult-themed” virtual products in the Second Life virtual world. This claim could not be made with respect to many other virtual worlds and is only possible because Eros is considered to own the intellectual property rights to its creations in Second Life.

Second Life allows expanded intellectual property rights for its users, but this is not the industry trend. Further, the law remains unclear regarding what real legal protections exist for game users with respect to virtual property which does not enjoy any third-level intellectual property rights. Until current laws adapt to provide meaningful legal protection, game publishers can continue to hold users to terms of use that assign all rights to the publishers, and do what they want with players’ virtual property.

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