

# Why Should Corporate Counsel Become Familiar With Virtual Environments? Aren't They Just Fun And Games?

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For quite some time I attempted to avoid the virtual world. After all, I am a busy attorney who does not have a lot of free time to get involved in non-work, first life activities, no less virtual, "Second Life" ones. However, my law practice reading (i.e., the reading I do to keep up with new cases, statutes, practice tips, issues and other information pertaining to my fields of practice – intellectual property and technology law) just wouldn't stop talking about metaverses, virtual space, and virtual environments, such as "Second Life." Now I had no choice but to learn what this is all about and, based on my studies thus far, corporate counsel needs to learn about it too.

One of the popular, if not the most popular, of the virtual environments is Second Life. At this time, or after reading this article, you may wish to visit [www.secondlife.com](http://www.secondlife.com) via your web browser. Because Second Life takes place in cyberspace, it is sometimes mistakenly called a MMORPG (pronounced "moor peg"), which stands for Massive Multiplayer Online Role Playing Game. But Second Life is not an online graphical interface MMORPG game like World of Warcraft. Although Second Life shares a surface resemblance to a multi-player graphics game in that digitized representations of real world people ("avatars") interact with other avatars, there are several defining differences from traditional MMORPGs. In Second Life the user: (1) is able to create, write computer code for, and manipulate the properties of objects within the virtual environment; (2) retains ownership of intellectual property rights to the items and/or software code the user creates; and (3) has no overall goals or objectives to meet to acquire game points or "levels." Rather, Second Life is designed to be a virtual reflection of the real world where people work, play and socialize.

Amazingly, all types of people have entered virtual environments to take part in a host of different activities: NASA has a Space CoLab; MTV has a club; Toyota sells digital Scion cards that can be customized; businesses conduct meetings; Starwood Hotels "built" a prototype hotel for input by customers; the film "X-Men 3 – The Last Stand" was promoted via real-time video streaming from the Cannes, France red carpet premiere; the Royal Liverpool Philharmonic has a replica of its concert hall and has performed in Second Life; several 2008 presidential candidates have a "vote for me" type of presence in Second Life; and

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many universities conduct classes and seminars in Second Life. Also, several real world attorneys have a presence in Second Life and have joined the Second Life Bar Association. Some have their own law firms and provide legal advice to other avatars. Since March 2006, Attorney Stevan Lieberman has been operating an office in Second Life that has the appearance of a wooden octagon floating 300 feet in the air.

Judge Posner of the Seventh Circuit Court of Appeals gave a presentation in December 2006 to promote his new book. This event took place entirely within Second Life and covered such topics as the copyright fair use doctrine. Reportedly, when Judge Posner's talk was interrupted by a 6-foot raccoon claiming to be an attorney from Washington, DC, he cleverly responded: "I like your tail."

It is estimated that each day in excess of \$1 million USD worth of transactions take place in Second Life. Therefore, it is no surprise that the virtual economy of Second Life has resulted in trademark and copyright infringement lawsuits being brought in U.S. courts. In a lawsuit filed on October 24, 2007 in the Eastern District of New York, a group of virtual merchants selling virtual products in Second Life sued Thomas Simon. The virtual merchant plaintiffs claimed that Simon willfully made unauthorized copies of their copyright and trademark protected products and Simon misrepresented that the products he sells are authentic ones. The plaintiffs sell adult-themed virtual items, including furniture, shoes, and skins to cover avatars. The complaint includes claims of unfair competition under Section 43(a) of the Lanham Act, copyright infringement under the U.S. Copyright Act, and counterfeiting of a registered trademark. This case settled in December 2007; however, wouldn't it be interesting if the parties to this case had agreed to resolve their dispute by participating in mediation or arbitration within Second Life? It certainly seems possible that dispute resolution in a metaverse could be successfully accomplished.

Various large corporations have expanded their branding to virtual environments. Nike has a virtual clothing store, and car manufacturers such as Nissan, Pontiac and Toyota have entered Second Life, as have 1-800-FLOWERS

and Colgate-Palmolive. There are even businesses that specialize in launching and integrating real-world brands into the virtual world.

Most corporations are quite aware of and have set up procedures for combating piracy, counterfeiting, and trademark and copyright infringement that occurs via the Internet. However, it appears that the trademarks and copyrights of major corporations are being infringed upon in the virtual world with impunity. In other words, it is apparent upon a first visit to a metaverse that many in-house counsel are not yet aware of and have not implemented procedures to investigate and combat such illegal activities within virtual environments. So, go ahead and create your avatar to see how your brand is doing in the virtual world. It might feel like fun and games, but in actuality you will be performing an important compliance function for the benefit of your company and its customers.

Second Life residents can buy and sell each other's creations using "Linden" dollars. In early 2007, the exchange rate was 270 Linden dollars to one U.S. dollar. As of the writing of this article, the Linden Life currency exchange web site states that "[R]ates fluctuate based on supply and demand, but over the last few years they have remained fairly stable at approximately 250 Linden Dollars (L\$) to the U.S. Dollar."<sup>1</sup> Players can use a credit card or PayPal to buy and sell currency through the both through the official LindeX currency exchange and through independent third-party vendors and exchanges. Where there is money there are taxes. Needless to say, Congress is evaluating whether to tax commerce that takes place in virtual worlds.

Second Life provides that its players own the intellectual property rights to the things they create within the virtual world. According to the Terms of Service agreement, these rights are enforceable both within the game and offline, and apply to both non-profit and commercial ventures. In what is reportedly the first lawsuit filed against Second Life, Marc Bragg, a West Chester, Pennsylvania solo attorney sued Second Life in May 2006. Bragg is alleged to have discovered a loophole that allowed him to buy virtual land really cheap before other players had an opportunity to bid. Linden removed Bragg from Second Life per the terms of its agreement which provides that Linden reserves the right to shut down any user's account at any time. Bragg's attorney asserts this forfeiture penalty clause is unenforceable. Linden's attorney moved to compel arbitration before the International Chamber of Commerce arbitration in San Francisco, as specified by the Second Life Terms of Service agreement. The U.S. District Court for the Eastern District of Pennsylvania, in a 46-page opinion, denied this motion, and Second Life's motion to dismiss for lack of personal jurisdiction.

Trademark and copyright violations and contract disputes are not the only legal concerns brought about by virtual worlds. Corporate and government counsel should also take notice of the possibility that virtual worlds could be used for money laundering, identity theft, and

other fraud-related crimes. Britain's Fraud Advisory Panel, a watchdog created by the Institute of Chartered Accountants in England and Wales, recently published a report urging the government to apply real-world financial regulation to Second Life and other virtual environments. The report warned that players can move illicit funds across national borders without constraint and with little risk of detection.

Some software firms are developing additional payment methods that can be used to purchase and sell virtual money. For example, the Swedish software company, MindArk, is developing ATM cards. These cards are essentially reloadable stored value cards that could be used to deposit and withdraw monies from virtual worlds. Consider that an individual can use false information to create one or more avatars and currently no customer identification or suspicious monitoring and reporting requirements have been imposed on virtual worlds as is required for certain financial institutions under the anti-money laundering provisions of the Bank Secrecy Act and USA Patriot Act. An avatar could fund a virtual account with proceeds of crime through virtual world ATMs or other payment methods, and have a co-conspirator on the other side of the world engage in a series of virtual world transactions which would convert those funds into various virtual world holdings (e.g., virtual real estate), only to be followed by an exchange of the virtual funds (i.e., laundering of these funds) back into real U.S. dollars. As it stands, it is unclear the extent of how much money laundering, if any, is occurring in these virtual worlds. However, one thing is clear – virtual worlds are a prime target for money laundering.

In sum, exposure to or at least some basic knowledge of virtual environments is desirable for corporate counsel. It might not be long before your marketing department is requesting a review of advertising materials to be presented in Second Life, or a customer or employee is reporting an abuse of the company's trademark or other intellectual property rights in a virtual environment. With virtual environments comes new vocabulary words and perhaps someday a new introductory voice over to a new Star Trek film being promoted in a virtual world:

Virtual Space: The next to final frontier

These are the voyages of the avatars from earth

Their multi-year mission

To explore strange new metaverses

To seek out new avatars and new virtual world civilizations

To boldly go where no avatar has gone before.<sup>2</sup>

<sup>1</sup> <http://secondlife.com/whatis/currency.php>

<sup>2</sup> "The complete introductory sequence, which was read by William Shatner at the beginning of every episode of Star Trek except The Cage and Where No Man Has Gone Before, is: Space, the final frontier. These are the voyages of the starship Enterprise. Its five-year mission: To explore strange new worlds. To seek out new life and new civilizations. To boldly go where no man has gone before." See [http://en.wikipedia.org/wiki/Where\\_no\\_man\\_has\\_gone\\_before](http://en.wikipedia.org/wiki/Where_no_man_has_gone_before).

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