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## AN AVATAR'S DAY IN COURT: A PROPOSAL FOR OBTAINING RELIEF AND RESOLVING DISPUTES IN VIRTUAL WORLD GAMES

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### ABSTRACT

Virtual world games are a hub for worldwide entertainment, social networking, and financial gain. They have also become a venue for criminal and tortious activities. Human players are using their in-game players, or avatars, to steal, defame, mutilate, defraud, and emotionally wreak havoc and disrupt other avatar game-play. Not only has this resulted in emotional detriment to players, but property and financial damage as well. Though such cruel acts are routinely brushed aside, critics, players, and scholars are increasingly attaching real life consequences to in-game activities. Despite the harm, victims are often unable to seek resolve, leading to a negative game-playing experience and potentially driving away business for game developers.

Though the real world is attempting to recognize in-game property rights to provide relief, it is not the viable solution some may think. As this paper demonstrates, parties face major obstacles in the real world attempting to resolve in-game disputes. Thus, I have proposed a two-tiered justice system: the In-Game Justice System (the "IGJ") and the Real World Justice System (the "RWJ") to provide a potential means of resolving in-game disputes using various real world theories of law and judicial proceedings. More importantly, real world courts would now be sought as a venue of last resort if an aggrieving player pierces the *virtual* veil (the "PVV"). This proposal intends to provide justice and relief to victims of virtual worlds, and hopefully a means towards understanding the interplay between the virtual world and the real world.

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### I. INTRODUCTION

[¶1] Virtual game worlds are one of today’s most lucrative entertainment venues. In these games, human players from around the world spend countless hours exploring, socializing, fighting, or participating in commerce. Certainly, one of the fascinations and intrigues of virtual games is that they mirror the real world, but only partially so. As such, players can live another life, a *virtual* life, in tandem with their real lives and all through the eyes of their game characters called avatars.<sup>1</sup>

[¶2] Over ten million avatars play worldwide and billions of dollars exchange hands in these virtual environments.<sup>2</sup> The virtual objects and property are worth real money and the players are very keen to develop the best and most successful avatars. Whether the environment is set up as a goal-oriented game or as a non-scripted game with free thinking and acting avatars,

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<sup>1</sup> An avatar is an icon or representation of a user in a shared virtual reality. RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 92 (2d ed. 1999). The origin of the name stems from Hindu mythology: “the descent of a deity to the earth in an incarnate form or some manifest shape; the incarnation of a god.” Dictionary.com, Avatar, <http://dictionary.reference.com/browse/avatar> (last visited Nov. 2, 2007).

<sup>2</sup> See Ania Lichtarowicz, *Virtual Kingdom Richer Than Bulgaria*, BBC NEWS, Mar. 29, 2002, <http://news.bbc.co.uk/1/hi/sci/tech/1899420.stm>.

the common thread among these virtual spaces is the player's substantial investment in time and resources. As a result, this form of serious gaming is more than just a pastime for leisurely entertainment. For some, it is a livelihood.

[¶3] And yet in these online gaming environments, where computer code and lax community standards are the only limits to an avatar's liberties, players are invariably subject to the deviant acts of other players; or alternatively, they are the deviant actors themselves. Put differently, players may choose from a variety of virtual crimes as long as the game lets them, without any realistic consequences. And the victims cannot turn to any virtual justice department or real world jurisdiction to seek direct relief from the perpetrator. Rather, victimized players are left in a disgruntled and uneasy state of game play.

[¶4] Players who have in-game assets or are engaged in virtual commerce really feel the rub of virtual game crime.<sup>3</sup> For instance, Carissa Hill, a resident of Lawrence, Kansas, called the local police in early 2006 because her avatar, who was a real estate agent in the very popular virtual game of Second Life,<sup>4</sup> had been swindled by an online scam artist that had stolen another online character's identity in the game.<sup>5</sup> However, Hill did not lose her real world money. Rather, she was cheated out of in-game Linden Dollars ("L\$")—the form of currency used in Second Life. Had she been able to convert her L\$ on the Linden Exchange ("LindeX")<sup>6</sup>, it would have been equivalent to 180 U.S. dollars. Evidently upset, Hill called the local real world police for she did not know where else to turn. However, the police could not help; they did not

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<sup>3</sup> For purposes of this paper, virtual crimes encompass both real world torts and criminal acts.

<sup>4</sup> See What is Second Life?, <http://www.secondlife.com> (last visited Nov. 2, 2007).

<sup>5</sup> Eric Weslander, *Virtual-Reality Crimes Present Literal Challenge for Real-Life Police*, LAWRENCE J.-WORLD, Nov. 12, 2006, [http://www2.ljworld.com/news/2006/nov/12/virtualreality\\_crimes\\_present\\_literal\\_challenge\\_re/?print](http://www2.ljworld.com/news/2006/nov/12/virtualreality_crimes_present_literal_challenge_re/?print).

<sup>6</sup> See Second Life - Currency Exchange, <http://secondlife.com/whatis/currency.php> (last visited Nov. 2, 2007) (The LindeX is the official Linden exchange and allows Second Life community members to convert Linden Dollars (L\$) into U.S. Dollars and vice-versa. Like a real life currency exchange, the rates of conversion between the two mediums fluctuate based on supply and demand. In general, though, the exchange rate is stable and is generally around 250 L\$ per U.S. Dollar.).

know what to do or how to handle the matter. “I would say this is a unique report,” commented Kim Murphree, the Lawrence Police Department spokeswoman.<sup>7</sup> Murphree explained, “This may happen all the time, but do people bring it to the attention of the police department? No.”<sup>8</sup>

[¶5] Though Hill’s reaction appears unique, and perhaps even extreme, her real world predicament arising from a virtual world incident cannot be ignored. More and more players are feeling the rub of *griefing*.

The griefer is a player of malign intentions. They will hurt, humiliate and dishevel the average gamer through bending and breaking the rules of online games. But their activities are hardly extraordinary. Indeed, they only exist at all because of normal, human urges, albeit the ugly and reprehensible ones. They want glory, gain or just to partake in a malignant joy at the misfortune of others.<sup>9</sup>

And in environments where griefing runs rampant, victimized players are ultimately impacted adversely.

[¶6] Indeed, the economic and social investments in virtual worlds are great and visibly, quite serious. An estimated 5.2 million players will subscribe to online games by 2008, bringing in an expected \$556 million in revenue.<sup>10</sup> Many have turned this hobby into a serious business opportunity. For instance, John Chapman of Canton, Michigan, earned approximately USD \$25,000 annually for three and a half years trading artifacts in the virtual world game, Ultima Online,<sup>11</sup> while he was unemployed.<sup>12</sup> It was Chapman’s only source of income. Had he, like Hill, been defrauded of his assets in the virtual space, his real world lifestyle would have taken a

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<sup>7</sup> Weslander, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> Jim Rossignol, *A Deadly Dollar*, ESCAPIST, Nov. 15, 2005, <http://www.escapistmagazine.com/issue/19/23>.

<sup>10</sup> David Becker, *Inflicting Pain on ‘Griefers’*, CNET NEWS.COM, Dec. 13, 2004, [http://news.com.com/Inflicting+pain+on+griefers/2100-1043\\_3-5488403.html](http://news.com.com/Inflicting+pain+on+griefers/2100-1043_3-5488403.html).

<sup>11</sup> See Ultima Online, <http://www.uo.com> (last visited Nov. 2, 2007).

<sup>12</sup> Mark Wallace, *The Game Is Virtual. The Profit is Real*, N.Y. TIMES, May 30, 2005, at §3, col. 1, available at <http://www.iht.com/articles/2005/05/29/business/games.php>.

drastic hit also. Thus, crimes committed in a virtual environment should not be overlooked.<sup>13</sup> Otherwise, real world authorities will likely face further virtual world challenges.

[¶7] Perhaps a reason why victimized avatars cannot seek direct relief has to do with the contentious debate over virtual game-play and the law: should virtual worlds fashion similar real world legal rules and consequences within their worlds?<sup>14</sup> Some argue that real world rules do not have a place in a virtual game setting—humans need not be subject to any consequences during fantasy game-play. After all, a game is defined as an amusement or pastime.<sup>15</sup>

[¶8] Though this position has held strongly for some time now, the flipside presents a more compelling argument: these games affect players and the state of game-play beyond just the hurt feelings one experiences briefly when being snubbed or deceived in a pastime game. There is a genuine social and economic investment that has tangible repercussions for players in the real world. Thus, the justification that games do not and should not have standards because they are merely games is overly-broad and inaccurate.

[¶9] The following game illustrates the point that virtual games should carry the heft of a legal relief system like other games involving real world economic and social investments. What would happen if in the real-world casino game of craps, Player A steals some of Player B's chips while Player B is consumed in throwing the dice? Upon finding out, would Player B just shrug his shoulders and respond, "It is just a game. I have no recourse. That guy can steal my chips and

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<sup>13</sup> "Crimes" are such activities considered criminal or tortious in the real world legal system. See, e.g., Jack M. Balkin, *Law and Liberty in Virtual Worlds*, 49 N.Y.L. SCH. L. REV. 63, 72-76 (2004) (describing the various types of tortious and criminal acts present in a virtual game).

<sup>14</sup> See, e.g., James Grimmelman, *Virtual Borders: The Interdependence of Real and Virtual Worlds*, FIRST MONDAY, Feb. 6, 2006, at § Introduction, <http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1312/1232> (referring to David R. Johnson and David Post, *Law and Borders: The Rise of Law in Cyberspace*, FIRST MONDAY, May 6, 1996, <http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/468/824>); see also Matt Kovacs, *Gaming, Virtual Worlds and the Law: A Study of the Legal Future of Massively Multiplayer Online Role Playing Games 1-2* (May 6, 2006) (unpublished undergraduate paper, Trinity University) (on file with Professor Aaron Delwiche, Trinity University), available at <http://www.trinity.edu/adelwich/worlds/articles/trinity.matt.kovacs.pdf>.

<sup>15</sup> RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 536 (2d ed. 1999).

there is nothing I can do about it.”? Probably not. Rather, Player B would be irate and demand his chips back whether he realized it that second or a week later. Those chips were his property<sup>16</sup> and he did not consent to their taking. And more likely than not, Player B would get his chips back, or an equivalent thereof. From a legal perspective, Player A committed theft,<sup>17</sup> the game setting does not change that. More importantly, no one would reject the victim’s demand and frustration for relief. It is unlikely that other players would tell him to just deal with the loss and move on.

[¶10] Analogously in a virtual game, taking one’s (virtual) game property without the player’s consent should carry similar consequences. These two game concepts differ only in their platforms—one occurs in the real world while the other occurs in a virtual world. First, game property in a virtual world is like the casino chips in the real world because there is a common understanding of ownership and utility. Like the casino granting Player B ownership and rights to use the chips he purchased with real money to play in the casino, an avatar has ownership rights to virtual property he has purchased or acquired with currency, as well as the exclusive right to use his virtual property in the game as he desires and the game allows.<sup>18</sup>

[¶11] Second, when a game lacks specific rules as to the appropriateness of game-play, common sense and custom usually prevail to guide player conduct and punish misconduct. In craps, Player B may seek direct relief from Player A in civil court under the principle of

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<sup>16</sup> See Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347, 347 (1967) (“Property rights are an instrument of society and derive their significance from the fact that they help a man form those expectations which he can reasonably hold in his dealings with others. These expectations find expression in the laws, customs, and mores of a society. An owner of property rights possesses the consent of fellowmen to allow him to act in particular ways. An owner expects the community to prevent others from interfering with his actions, provided that these actions are not prohibited in the specifications of his rights.”).

<sup>17</sup> See *BALLENTINE’S LAW DICTIONARY* 1272 (3d ed. 1969) (defining “theft” as “a fraudulent taking of corporeal personal property belonging to another from his possession . . . without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking”).

<sup>18</sup> See *Second Life - Own Virtual Land*, <http://secondlife.com/whatis/land.php> (last visited Nov. 4, 2007) (In Second Life, ownership of property is assumed upon payment: “Become a part of history by purchasing land and *developing your own piece* of Second Life,” the site says. “The Pricing and Fees are simple; you pay \$9.95 a month plus a Land Use Fee proportional to the amount of *land you own*.” (emphasis added)).

conversion, even though neither the craps game nor the casino actually enumerates this rule. Real-world law, custom, and behavior dictate that this conduct is not tolerated, and even punishable by law. In the same way, nowhere in the rules of virtual games may it specifically spell out that one who takes another's property without consent will be liable for conversion or theft. Rather, it is understood that this behavior comes with repercussions. Because it is not specified, does it give another player the right to take one's virtual property without consent and do whatever he pleases? No, because real world common sense tells us that taking another's property without consent is wrong. Why is it, then, that taking property in a virtual world seems by some to be justified as just a fantasy game, yet frowned upon and even illegal in a real world setting? There should be no difference between a game played in cyberspace for real money and a game played in the real world for real money.

[¶12] Presently, the only roadmap guiding players and their activities are the game developer's End-User License Agreement (EULA) or Terms of Service (TOS).<sup>19</sup> The EULAs provide behavioral guidelines as well as the various kinds of punishments if players violate game-play: a slap on the wrist, a warning, a timed suspension, or banishment.<sup>20</sup>

[¶13] However, the EULAs do not provide a mechanism or forum for justice that can enhance a player's gaming experience. This is indeed problematic. Where can a victimized avatar turn for relief? Does an avatar have rights to a forum that will resolve disputes? If a forum were in place, then victims, like Carissa Hill, would not feel compelled to call the real world police.<sup>21</sup> Moreover, a player would be more likely to play in a virtual game where her assets are protected and, if necessary and available, have her day in court.

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<sup>19</sup> For purposes of this paper, the term EULA will be used to also include TOS Agreements.

<sup>20</sup> See e.g., Second Life - Community Standards, <http://www.secondlife.com/corporate/cs.php> (last visited Nov. 2, 2007).

<sup>21</sup> See Weslander, *supra* note 5 .

[¶14] The cumulative effect of aberrant behavior may not bode well for game developers. If players continue to use whatever computer code trickery and deceit to wreak mayhem and infringe on the rights of other players, those victimized avatars will either terminate their accounts and start *new lives* in a competitor's virtual world game, or they may *take justice into their own hands* through egregious actions. This would surely set-off a domino effect of dissatisfaction and havoc.

[¶15] Game developers, then, should also incorporate into their EULAs and game design a relief system that will temper avatar deviance and increase overall player satisfaction. After all, almost every other facet of the real world is playing out in virtual worlds. As such, this paper introduces a virtual court system for virtual game worlds. The system is not a policing mechanism, but more of a discretionary forum for avatars to actively seek justice and equity when they have been wronged. Using existing legal systems and theories of contract law, tort law, criminal law, corporate law, and alternative dispute resolution, I propose a two-tiered justice system: the In-Game Justice System (the "IGJ") and the Real-World Justice System (the "RWJ"). Within the IGJ, aggrieved *avatars* will be able to seek direct relief from other *avatars* in two venues, an in-game small claims court (the "ISCC") which is available for public viewing within the game world, and an in-game dispute resolution ("IDR") forum that occurs privately behind closed doors. Not only will this allow victimized avatars a chance to have their day in court, but it will send the message that the liberty to act however an avatar chooses also includes an avatar's right to seek justice.

[¶16] The RWJ is a forum of last resort that can only be sought when players have pierced the *virtual veil* ("PVV"). Essentially, this means that human players have used their

avatars to commit acts that substantially<sup>22</sup> affect another player's well-being in the real world as well as its avatar in the virtual world. Both the IGJ and the RWJ will help fill-in the gaps that developers have failed to address in their EULAs: an avatar's access to justice and a stronger sense of deterrence. With a better sense of avatar rights, game developers will be able to retain and attract more avatars into their worlds.<sup>23</sup> Importantly, avatars will have a right to be heard and a right to process—a cornerstone of an ordered society.

[¶17] While virtual world claims *could* be brought into a real world court system this would be problematic for several reasons. First, jurisdictional issues pose an impediment as players span the globe. Second, virtual world claims would add to an already heavy caseload. Third, the procedural and evidentiary issues associated with intangible media pose unique problems. Lastly, litigation fees will often exceed amounts in controversy. Thus, the costs of these issues presented will likely outweigh the benefits of real world litigation. Rather, the two-tiered justice system will fare better for *all worlds* involved.

## II. THE RECENT PHENOMENON OF PLAYING GAMES ONLINE

[¶18] Virtual worlds are a binary-based universe where human players find entertainment and commercial value through their avatars. They are very much like traditional video games in that they have game characters, levels, goals, economies, possibly combat, and surplus entertainment value. However, the virtual world environment does not pause or start over when a player turns the game off to eat dinner or go to work; rather, the virtual world keeps moving

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<sup>22</sup> The meaning of “substantially” will be determined on a case-by-case basis. Ultimately, precedent will develop over time to better guide the RWJ forum decisions.

<sup>23</sup> See Andrew E. Jankowich, *Property and Democracy in Virtual Worlds*, 11 B.U. J. SCI. & TECH. L. 173, 179 (2005) (“The absence of a robust legal system in a complex environment like a virtual world inhabited by people with very limited rights will lead those people to search for environments where they have greater power.”).

forward and *life goes on*. With their in-game characters, humans travel through virtual worlds accomplishing tasks, forming guilds, or perusing the various communities.

[¶19] When a player registers as a member of a virtual game, he makes his own unique avatar. The player can then fashion his avatar as he chooses, subject only to the game's constraints. Some players build their avatars to resemble their real life identities, while others use this virtual venue creatively developing characters that are far beyond the real humans' own profession, physical appearance, or personality. And though the avatars' environment is purely fantastical many—inside and outside these worlds—argue that life in a virtual world is just as real as life in the real world.<sup>24</sup>

#### A. 3 Categories of MMOGs

[¶20] Massively Multiplayer Online Games (“MMOGs” or “MMOs”) are virtual online games played over the internet where hundreds of thousands of players play simultaneously. There are three categories of MMOGs: first, scripted games called MMORPGs, second, unscripted games called Virtual Real Worlds, and lastly, the standard board games that are played over the internet called Casual Games.

[¶21] Massive multiplayer online role-playing games (“MMORPGs”) are perhaps the most lucrative of the MMOGs today.<sup>25</sup> Essentially, they are online games where large numbers of players interact with each other in a pre-scripted virtual world. These games are designed with a goal and purpose, such as accumulating the best weapons, receiving the most points, or attaining the highest level of power. In MMORPGs, an economy and a system for bartering

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<sup>24</sup> See Richard Siklos, *A Virtual World but Real Money*, N.Y. TIMES, Oct. 19, 2006, at C2.

<sup>25</sup> List of MMORPGs - Wikipedia, [http://en.wikipedia.org/wiki/List\\_of\\_MMORPGs](http://en.wikipedia.org/wiki/List_of_MMORPGs) (last visited Nov. 2, 2007) (listing MMORPGs available for play).

allows exchanges of weapons, armor, and even currency amongst players. Avatars can participate in achieving their goals individually or in guilds or clans.<sup>26</sup>

[¶22] MMORPGs have a combined global membership in subscription and non-subscription games exceeding 15 million as of 2006;<sup>27</sup> and the revenues exceeded a billion dollars in 2005, and will likely exceed 3.5 billion dollars by 2009.<sup>28</sup> Three popular MMORPGs include EverQuest, Eve Online, and World of Warcraft.

[¶23] EverQuest<sup>29</sup> was launched by Verant Interactive in March 1999 and later acquired by Sony Entertainment.<sup>30</sup> EverQuest is a fantasy adventure game where players face challenges and earn rewards in the quest for dominance and survival.<sup>31</sup> For five years, EverQuest was the most commercially successful MMORPG in the United States.<sup>32</sup> Edward Castronova, a renowned professor and writer in the field of virtual worlds and gaming, opined that if Everquest's game-world *Norrath* were a real country, then the real world trading of characters, artifacts and services would make its gross domestic product (GDP) 77<sup>th</sup> in the world, putting it somewhere between Russia and Bulgaria.<sup>33</sup>

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<sup>26</sup> See MMORPG.com, <http://www.mmorpg.com/> (last visited Nov. 4, 2007).

<sup>27</sup> MMOGCHART.com, <http://www.mmogchart.com> (follow "Total Active Subscribers" hyperlink) (last visited Nov. 4, 2007).

<sup>28</sup> Press Release, Parks Associates, Online Gaming Revenues to Triple by 2009 (Dec. 14, 2005), [http://www.parksassociates.com/press/press\\_releases/2005/gaming-1.html](http://www.parksassociates.com/press/press_releases/2005/gaming-1.html).

<sup>29</sup> See Everquest, <http://everquest.station.sony.com/> (last visited Nov. 4, 2007).

<sup>30</sup> See MMORPG – TenTon Wiki, <http://wiki.tentonhammer.com/index.php?title=MMORPG> (last visited Dec. 5, 2007).

<sup>31</sup> See EverQuest: Game Information, <http://www.mmorpg.com/gamelist.cfm?setView=overview&gameID=9&bhcp=1> (last visited Nov. 4, 2007). A player can "[c]hoose from a variety of races and classes, customize [his] character, and begin [his] quest in any number of cities or villages throughout multiple continents. [A player can equip himself] for adventure, seek allies and knowledge, and experience a rich world . . . [A player can meet] new friends from around the world to face epic challenges. [A player can be] a noble human knight, a vicious dark elf thief, a greedy dwarven merchant, or whatever suits [his] desire." *Id.*

<sup>32</sup> See MMORPG – TenTon Wiki, *supra* note 30.

<sup>33</sup> Edward Castronova, *Virtual Worlds: A First-Hand Account of Market and Society on the Cyberian Frontier*, 2 GRUTER INST. WORKING PAPERS ON LAW, ECON., AND EVOLUTIONARY BIOLOGY 1, at 28 (2001), available at <http://www.bepress.com/giwp/default/vol2/iss1/art1> (follow "View the article" hyperlink) (last visited Nov. 4, 2007).

[¶24] Another successful MMOPRG is Eve Online,<sup>34</sup> launched by Crowd Control Productions in May 2003.<sup>35</sup> Here, players are spaceship pilots cut off from the Milky Way galaxy, and their task is to rebuild society. Players can engage in many tasks in the *EVE* universe, including mining, trading and warfare.<sup>36</sup>

[¶25] The World of Warcraft (“WoW”), launched by Blizzard Entertainment in November 2004, has 7.5 million subscribers worldwide and is today’s most popular MMORPG.<sup>37</sup> “[P]layers adopt the roles of warriors or hunters questing for virtual gold and power in an atmosphere somewhat reminiscent of *The Lord of the Rings*.”<sup>38</sup> Success is signaled by money, items, and experience which allow avatars to improve in skill and power. Additionally, players battle against other players, including duels and fights against enemy factions.<sup>39</sup> Besides the game playing, WoW has a virtual community where players can buy and sell products from one another, as well as auction off weapons and tools for gold coins and points.

[¶26] In contrast to MMORPGs, Virtual Real Worlds like The Sims or Second Life have no pre-scripted story line or purpose in mind. Players interact with each other in any venue within the game, such as a conference, restaurant, casino, brothel, home, or mall. Essentially, avatars do whatever they desire in these environments so long as the computer code and the user guidelines permit. “The result is a libertarian’s paradise. In this anarchic world created by

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<sup>34</sup> EVE Online, <http://www.eve-online.com/> (last visited Nov. 4, 2007).

<sup>35</sup> Press Release, Crowd Control Productions, Highly Anticipated Massively Multiplayer Online Game (Apr. 23, 2003), [http://www.ccpgames.com/press/press\\_releases.asp?pressReleaseID=7](http://www.ccpgames.com/press/press_releases.asp?pressReleaseID=7).

<sup>36</sup> Ken Bartrum, *Eve Online: The Wait Is Over! Check Out Our Full Review*, IGN ENTMT, June 23, 2006, <http://pc.ign.com/articles/425/425535p1.html>.

<sup>37</sup> Press Release, Blizzard Entertainment, World of Warcraft: The Burning Crusade (Nov. 9, 2006), <http://www.blizzard.com/press/061109.shtml>.

<sup>38</sup> Brian Lamb, *Alternative Existence in Parallel Worlds*, UBC REPORTS, Jan. 4, 2007, <http://www.publicaffairs.ubc.ca/ubcreports/2007/07jan04/parallel.html>.

<sup>39</sup> See World of Warcraft - Wikipedia § 1, [http://en.wikipedia.org/wiki/World\\_of\\_Warcraft](http://en.wikipedia.org/wiki/World_of_Warcraft) (last visited Nov. 2, 2007).

freethinkers, avatars can socialize, buy and sell a variety of commodities, enjoy a variety of performances, listen to lectures and much more.”<sup>40</sup>

[¶27] Second Life was launched by Linden Lab in 2003. Users navigate, explore and interact with ever-changing environments created by its residents. “The idea behind Second Life is similar to the open-source experiments, such as the online encyclopedia Wikipedia, where the users create the content. In Second Life, the communal aspects of open-source come to life in a science fiction inspired world experienced through the first-person perspective.”<sup>41</sup> There are a little under two million unique members in Second Life and this number is growing at a rate of thirty percent per month.<sup>42</sup> At any given moment, approximately 20,000 players are logged on to Second Life.<sup>43</sup>

[¶28] Another virtual real world with no scripted purpose is The Sims Online,<sup>44</sup> which was launched by Electronic Arts in 2002.<sup>45</sup> Players work to earn money, spend money to build or buy houses and fill their homes with items they buy. It, too, is a venue for social networking.

[¶92] Besides MMORPGs and Virtual Worlds, another type of MMOG is Casual Games. These games imitate board games or paper-based games. They allow players to play one another over the internet. Some examples include chess, backgammon, or Tetris.

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<sup>40</sup> Daniel Harju, *Business Mixes with Pleasure in Second Life*, DAILY SUNDIAL, Dec. 6, 2006, <http://media.sundial.csun.edu/media/storage/paper862/news/2006/12/06/Features/Business.Mixes.With.Pleasure.In.Second.Life-2524276.shtml>.

<sup>41</sup> *Id.*

<sup>42</sup> Second Life, SL Virtual Economy Key Metrics 6 (Feb. 2, 2006) [http://static.secondlife.com/\\_files/xls/SL\\_Virtual\\_Economy\\_Metrics\\_02-02-07.xls](http://static.secondlife.com/_files/xls/SL_Virtual_Economy_Metrics_02-02-07.xls).

<sup>43</sup> This data is an approximation of a two week observation of community members in Second Life between January 20, 2007 and February 3, 2007.

<sup>44</sup> The Sims Online, <http://www.ea.com/official/thesims/thesimsonline/us/nai/index.jsp> (last visited Nov. 3, 2007).

<sup>45</sup> Press Release, The Sims: News, EA Ships The Sims Online (Dec. 17, 2002), [http://thesims.ea.com/us/news/tsoships\\_pressrelease.html](http://thesims.ea.com/us/news/tsoships_pressrelease.html).

## B. Economic and Social Benefits of MMOGs

[¶30] MMOGs contribute to a host of economic and social benefits for players. In terms of economic gains, MMOGs parallel real world business opportunities.<sup>46</sup> Companies running *get rich quick* websites cater to those players hoping to make a buck or two when playing. By way of example, Gaming Pays!<sup>47</sup> sells tutorials and tips for virtual gaming economic success. On this site, Erick Sizelove, from Midway City, California reports, “I’ve made about \$20,000 [U.S.] alone so far with [EverQuest] buying and selling. My record for 1 day of sales was \$1700 with an average of \$400 to \$500 per day. I am living proof that it’s really possible to make thousands in online gaming sales.”<sup>48</sup>

[¶31] The basis for player success essentially lies in the world’s virtual economy. “Virtual currency is . . . the money equivalent unit of trade that MMOG players can trade for goods and services.”<sup>49</sup> Each game world has its own form of currency, usually convertible into real world dollars either through the game’s own exchange, or third party exchanges and auction sites. “Game currency on MMOs has some value—people spend a lot of time trying to amass in-game wealth and property . . . .”<sup>50</sup>

[¶32] For instance, Linden Lab operates the Linden Exchange (“LindeX”) where players may cash out their L\$ in Second Life—from sales of their virtual property or profits from

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<sup>46</sup> See, e.g., Laurence H. M. Holland & David M. Ewalt, *Making Real Money in Virtual Worlds*, FORBES.COM, Aug. 7, 2006, [http://www.forbes.com/2006/08/07/virtual-world-jobs\\_cx\\_de\\_0807virtualjobs.html](http://www.forbes.com/2006/08/07/virtual-world-jobs_cx_de_0807virtualjobs.html) (follow “In Pictures: Ten Ways to Make Real Money in Virtual Worlds” hyperlink within the article to see details of several highly profitable jobs in virtual worlds ranging from landlords to gamblers to even prostitutes).

<sup>47</sup> Gaming Pays!, <http://www.gamingpays.com> (last visited Nov. 3, 2007).

<sup>48</sup> *Id.*

<sup>49</sup> Joshua de Larios-Heiman, *Can Elvish Gold Pieces Ever Become Real Money? The Numismatic Qualities of Virtual Currency Under the Law* 16 (2005), [http://terranova.blogs.com/terra\\_nova/ElvishGold.pdf](http://terranova.blogs.com/terra_nova/ElvishGold.pdf).

<sup>50</sup> Posting of Shankar Gupta to Gaming Insider, *A Fistful of Play Dollars*, [http://blogs.mediapost.com/gaming\\_insider/?p=17](http://blogs.mediapost.com/gaming_insider/?p=17) (Sept. 8, 2006).

services rendered—for real money.<sup>51</sup> Linden Lab does not provide hard currency, but allows holders of L\$ to sell them to those seeking to purchase.<sup>52</sup> In Second Life, the money obtained from selling L\$ can remain as credit in the player’s Second Life account, and the credit is applied to any account fees. Alternatively, the player can opt to take the real dollars in cash through PayPal,<sup>53</sup> which costs one dollar, or check, which costs ten dollars for U.S. transfer and fifteen dollars for international transfer.

[¶33] Besides the gaming companies themselves, secondary markets, like third party exchanges and auction sites, are popular exchange venues. “Using third party exchanges and auction sites, players can trade one virtual currency for . . . different virtual currencies and virtual assets in different MMOGs. Players can also trade their virtual currency for real money using these third party exchanges.”<sup>54</sup> These sites serve an intermediary role between players who want to sell their virtual currency or property to buyers who want to buy virtual currency or property. Once the virtual property or currency is sold, the proceeds are deposited into the real player’s third party site account which can be later cashed out via PayPal or check.

[¶34] The virtual economy is really one of the major catalysts of today’s virtual gaming boom. In 2003, Julian Dibbell, a contributing editor for *Wired* magazine, vowed to spend a year making a living as a retailer in the scripted game, *Ultima Online*. He sold in-game items, currency, and real estate on eBay.<sup>55</sup> He made nearly \$4,000 in profits monthly totaling

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<sup>51</sup> Second Life - Linden Dollar Exchange, <https://secure-web4.secondlife.com/currency/> (last visited Nov. 2, 2007) (“Second Life has its own unit-of-trade, the Linden Dollar. Residents use their Linden Dollars to pay for goods and services provided by other Residents. The Linden Dollar can also be exchanged for U.S. Dollars and other foreign currencies on a number of different websites, including right here via LindeX exchange.”).

<sup>52</sup> The process is similar to a real world stock exchange, where the seller of a certain number of shares of a stock can sell shares to those other individuals who want to buy that stock.

<sup>53</sup> PayPal.com, <http://www.paypal.com>. PayPal is a service that allows users to pay and get paid online.

<sup>54</sup> de Larios-Heiman, *supra* note 49, at 17; *see, e.g.*, eBay, <http://www.ebay.com>; IGE, <http://www.ige.com>; PlayerAuctions, <http://www.playerauctions.com>.

<sup>55</sup> Laurence H. M. Holland & David M. Ewalt, *How To Make Money in a Virtual Job*, FORBES.COM, Aug. 11, 2006, <http://www.rediff.com/money/2006/aug/11forbes.htm>.

approximately \$36,000 for the year, and “Dibbell says that his income only qualifies as lower-middle class among virtual businessmen.”<sup>56</sup>

[¶35] On any given day, Second Life dollar transactions reach upwards of six figures. For instance, on January 4, 2007, \$1,098,800 United States dollars were spent in Second Life in a day’s time. Avatar Anshe Chung is the first online personality to achieve a net worth exceeding one million US dollars from profits entirely earned inside Second Life.<sup>57</sup> Chung and hundreds of other virtual landowners have spent countless hours amassing wealth and growth such that Second Life is now approximately 60,000 acres, or the equivalent of 95 square miles in the real world.<sup>58</sup> And with their property and products, avatars are living out fantasies their owners would otherwise be unable to realize in real life.

[¶36] Fashioned like a real world capital market system, Second Life avatars post job opportunities on websites or within Second Life for in-game business partners, project managers, dancers, et cetera.<sup>59</sup> In return, avatars receive L\$ and/or exclusive rights to certain high traffic and restricted communities. For instance, a job posting was looking to hire DJ’s and dancers.<sup>60</sup> Importantly, corporations and educational institutions are also making a significant investment in MMOGs. Mega-corporations like Dell, Nike, Mercedes Benz, and Calvin Klein have made a brand-presence in Second Life. “They are there for many different business reasons, like getting closer to customers, better understanding digital natives, accessing a new tech savvy audience,

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<sup>56</sup> *Id.* See also JULIAN DIBBELL, PLAY MONEY: OR, HOW I QUIT MY DAY JOB AND MADE MILLIONS TRADING VIRTUAL LOOT (2006).

<sup>57</sup> Press Release, Anshe Chung Studios, Anshe Chung Becomes First Virtual World Millionaire (Nov. 26, 2006), [http://www.anshechung.com/include/press/press\\_release251106.html](http://www.anshechung.com/include/press/press_release251106.html); see also Rob Hof, *Second Life’s First Millionaire*, BUSINESSWEEK: THE TECH BEAT, Nov. 26, 2006, [http://www.businessweek.com/the\\_thread/techbeat/archives/2006/11/second\\_lifes\\_fi.html](http://www.businessweek.com/the_thread/techbeat/archives/2006/11/second_lifes_fi.html).

<sup>58</sup> See Siklos, *supra* note 24.

<sup>59</sup> See SLProfiles.com, Second Life Profiles, <http://www.slprofiles.com/secondlifejobs.asp> (last visited Oct. 31, 2007).

<sup>60</sup> Posting of Zezea to SLProfiles.com, <http://www.slprofiles.com/secondlifejobs.asp?id=34&a=details> (Nov. 9, 2006). The job description provided the following: “Soulmates - Club Phoenix is hiring Dancers, Hosts and DJs. We WILL train you if you have no experience. Hosts and DJs are paid in tips. Dancers are paid a linden [L\$] a minute. You would only *HAVE* to work one day a week for two hours. But you can work more as you like.” *Id.*

testing new offerings, showcasing company innovation and more.”<sup>61</sup> And of course, the financial investment is significant: “Opt for a really elaborate build, hold frequent events to keep people coming back, and hire an employee or two to keep things running, and the budget could easily hit \$500,000 a year.”<sup>62</sup> Thus, the corporations cannot risk griefers compromising their brands.

[¶37] Besides the economic benefits that virtual worlds afford players, these MMOGs are also another venue to socialize, team build, and meet people from around the world. As one WoW player explained:

Think about it: I’m a 33-year-old guy with a 9-to-5 job, a wife and a baby on the way. . . . I can’t be going out all the time. . . . In WoW I’ve made, like, 50 new friends, some of whom I’ve hung out with in person, and they are of all ages and from all over the place. You don’t get that sitting on the couch watching TV every night like most people.<sup>63</sup>

Players invest a significant amount of time and emotion in virtual space. Castronova conducted a study in EverQuest to gauge players’ time commitments to their avatars:

[In the study], 20% of participants in a large survey of *EverQuest*’s users attested to living their lives in mostly *EverQuest*’s Norrath, 22% expressed the desire to spend all their time there, and 40% indicated that if a sufficient wage were available in Norrath then they would quit their job or studies on earth[!]”<sup>64</sup>

[¶38] Consequently, the in-game social networks have seeped into other mediums outside of the gaming platforms. Scores of websites and blogs detail players’ experiences and convey the seriousness of such social game-play.<sup>65</sup> Players lament over a hard day’s work in a virtual

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<sup>61</sup> Monday Morning, First Lessons from our Second Life, [http://mondaymorning.typepad.com/monday\\_morning/2006/11/first\\_lessons\\_f.html](http://mondaymorning.typepad.com/monday_morning/2006/11/first_lessons_f.html) (last visited Oct. 31, 2007).

<sup>62</sup> Frank Rose, *Lonely Planet*, WIRED MAGAZINE, Aug. 1, 2007, at 143, available at [http://www.wired.com/techbiz/media/magazine/15-08/ff\\_sheep](http://www.wired.com/techbiz/media/magazine/15-08/ff_sheep) (online version of the article bears the title *How Madison Avenue is Wasting Millions on a Deserted Second Life*).

<sup>63</sup> Seth Schiesel, *An Online Game, Made in America, Seizes the Globe*, N.Y. TIMES, Sept. 5, 2006, at A1.

<sup>64</sup> F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CAL. L. REV. 1, 9 (2004) (discussing Castronova, *supra* note 33).

<sup>65</sup> See e.g., It’s a Scaggs Life!, <http://scaggslife.blogspot.com> (last visited Oct. 31, 2007); Livin’ La Vida Segunda <http://vidasegunda.blogspot.com/> (last visited Oct. 31, 2007); Natalia Zelmanov’s Second Life Diary,

game, read other players' blogs about their avatars, vote on certain issues going on in Second Life,<sup>66</sup> and even fall in love.<sup>67</sup> It is as if these avatars are recounting and acting a life lived in the real world.

[¶39] Elizabeth M. Reid, a researcher on Internet culture, notes that human players “become emotionally involved in the virtual actions of their characters, and the line between virtual actions and actual desires can become blurred.”<sup>68</sup> Second Life avatar and blogger Mordecai Scaggs maintains a blog dedicated to his loving relationship with avatar, Melissa.<sup>69</sup> On October 20, 2006, Scaggs posted of the time when Melissa was basking in the Lost Gardens of Apollo: “Melissa looked truly divine here, and for once I did not feel overwhelmed by her beauty, but actually nourished and warmed by it. . . . Virtual world it may be, but if you are prepared to let it touch you, [Second Life] contains some fantastic balms for the soul.”<sup>70</sup> Scaggs even posted screenshots of the blissful moments where the two avatars appear *snuggling* on a bench.<sup>71</sup>

[¶40] Thus, these seemingly utopic fantasies pique the interests of many because of their subsequent impact on the human players themselves. True, these virtual environments are simply games, but games with real-world effects.

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<http://slnatalia.blogspot.com/> (last visited Oct. 31, 2007); Chey's Second Life Blog,

<http://cheyennepal.blogspot.com/> (last visited Oct. 31, 2007).

<sup>66</sup> See Second Life - Community: Vote, <http://secondlife.com/vote/> (last visited Nov. 4, 2007).

<sup>67</sup> See e.g., Posting to New World Notes, Man and Man on Woman on Woman (Jan. 10, 2005), [http://secondlife.blogspot.com/nwn/2005/01/man\\_and\\_man\\_on\\_.html](http://secondlife.blogspot.com/nwn/2005/01/man_and_man_on_.html).

<sup>68</sup> Elizabeth M. Reid, *Text-Based Virtual Realities: Identity and the Cyborg Body*, in HIGH NOON ON THE ELECTRONIC FRONTIER: CONCEPTUAL ISSUES IN CYBERSPACE 327, 340 (Peter Ludlow ed., 1996).

<sup>69</sup> User Profile: Mordecai Scaggs, <http://blogger.com/profile/05102137342013949598> (last visited Nov. 9, 2007).

In his profile, Mordecai Scaggs describes himself as “[h]appily bound for all eternity to his lady love, a woman of infinite patience and jest, shining brightest of all the stars in the heavens.” *Id.* See also Posting of Mordecai Scaggs to It's a Scaggs Life!, *Perfect Moment*, <http://scaggslife.blogspot.com/2006/10/perfect-moment.html> (Oct. 20, 2006) [hereinafter *Perfect Moment*].

<sup>70</sup> *Perfect Moment*, *supra* note 69.

<sup>71</sup> *Id.*

### III. THE CURRENT STATE OF THE “LAW”

[¶41] Alas, MMOGs have their dark side too. Computer code and basic community standards<sup>72</sup> are the only major roadblocks to player behavior. Even so, avatars still find ways to gain unfair advantages over other avatars. Because of the serious economic and social investments, deviant game-play has more consequences for those avatars affected. After all, a player who has invested tangible real world money to buy virtual property that is intentionally destroyed by a devious avatar will be unable to reap the benefits of selling that land for real world money. In effect, such conduct is akin to real world criminal and civil causes of action. As these worlds become more mainstream and the number of avatars increase, avatars will suffer the wrath of more real world-like crimes. Perhaps game developers did not foresee the degree of such devious actions, and consequently, matters of justice and relief outlets were not seriously considered.

Stopping . . . crime, or at least containing it, has proved to be one of the most vexing challenges of maintaining an online community. If paying subscribers are constantly being slaughtered and robbed by avatar miscreants, subscriptions will surely decline, hurting the bottom line of the world's owner.<sup>73</sup>

[¶42] Moreover, because these game companies provide in their license agreements that they own the virtual property,<sup>74</sup> players cannot establish legitimate claims when griefing has occurred to their virtual property. According to Josh Fairfield, associate professor of law at Indiana University, “Because players don't own it, players can't fight back when it's stolen. . . . And that makes players easy victims.”<sup>75</sup>

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<sup>72</sup> Such Community Standards are usually outlined in the EULA of the game.

<sup>73</sup> Dan Hunter & F. Gregory Lastowka, *To Kill an Avatar*, LEGAL AFF., July-Aug. 2003, at 22, available at [http://www.legalaffairs.org/issues/July-August-2003/feature\\_hunter\\_julaug03.msp](http://www.legalaffairs.org/issues/July-August-2003/feature_hunter_julaug03.msp).

<sup>74</sup> Contrarily, Linden Lab provides that digital assets created within Second Life are owned by its creators. See Matt Haughey, *Second Life Residents to Own Digital Creations*, CREATIVE COMMONS, Nov. 14, 2003, <http://creativecommons.org/press-releases/entry/3906>.

<sup>75</sup> Silvia Spring, *Gamies: Virtual Thievery*, NEWSWEEK INT'L, Dec. 11, 2006.

[¶43] Essentially, victimized players are irate because they are wronged and they cannot seek relief. The lack of relief means that perpetrators are not deterred. This, in turn, reduces the amount of enjoyment players take in the game and, ultimately, drives away business due to the flare-ups of bad publicity for the game.<sup>76</sup>

#### A. The Players

[¶44] Coined as “griefers,”<sup>77</sup> such avatars like nothing better than to kill teammates or obstruct the online game’s objectives. “Griefers scam, cheat and abuse, often victimising [sic] the weakest and newest players. In games that attempt to encourage complex and enduring interactions among thousands of players, ‘griefing’ has evolved from being an isolated nuisance to a social disease.”<sup>78</sup> As one Second Life member and blogger opines, “People who set out to intentionally disrupt Second Life, the ‘game’ or disrupt the Second Life experience of others are griefers and absolutely should be dealt with harshly, banned, fined, whatever. They cause harm for the sake of causing harm.”<sup>79</sup> Stephen Davis of IT GlobalSecure, a company that develops security technologies for online games, says that twenty-five percent of customer support calls to online game companies are a result of griefing: “For a small game, these costs can be the difference between success and failure. For a large game, these costs are a continual drag on the bottom line.”<sup>80</sup>

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<sup>76</sup> See e.g., Duncan Riley, *Virtual Pedophilia Report Bad News For Second Life*, TECHCRUNCH, Oct. 30, 2007 <http://www.techcrunch.com/2007/10/30/virtual-pedophilia-report-bad-news-for-second-life/> (“The quicker Linden Lab cracks down on [virtual pedophiles], the better for the many Second Life fans out there who preach the Second Life gospel where ever they go.”); Maria Gerosa, *Stop the Criminalization of Second Life!*, SECOND LIFE HERALD, Jun. 7, 2007, [http://foo.secondlifeherald.com/slh/2007/06/mario\\_gerosa\\_st.html](http://foo.secondlifeherald.com/slh/2007/06/mario_gerosa_st.html) (“It seems like every day there is more bad press about the moral and legal problems with Second Life.”).

<sup>77</sup> See Griefer - Wikipedia, <http://en.wikipedia.org/wiki/Griefing> (last visited Nov. 2, 2007) (“A griefer is a slang term used to describe a player in a multiplayer video game who plays the game simply to cause grief to other players through harassment.”)

<sup>78</sup> Martin Davies, *Gamers Don’t Want Any More Grief*, GUARDIAN, June 15, 2006, available at <http://technology.guardian.co.uk/weekly/story/0,,1797198,00.html>.

<sup>79</sup> Posting of Allana Dion to AllanaDion.com, *What Is a Griefer?*, <http://www.allanadion.com/?p=23/> (Nov. 10, 2006).

<sup>80</sup> Davies, *supra* note 78 (quoting Stephen Davis of IT Global Structure).

[¶45] On the receiving end of the griefers are the grieved and grieving: the victims. Unfortunately, these victimized avatars are often overlooked by game developers and academics.<sup>81</sup> EULAs generally focus on the perpetrators<sup>82</sup> without leaving much of a voice for the victims to directly seek justice against their perpetrators. Certainly, players who spend tireless months buying and building virtual properties are damaged emotionally, psychologically, and economically when griefers steal or destroy the players' properties or reputations. And because people's money, time, and identity are at stake,<sup>83</sup> policing these disturbances is particularly important.

#### B. The Rules

[¶46] Depending on the MMOG, the rules of the game vary. Currently, the main vehicle for player guidance in scripted or unscripted virtual worlds is the EULA. The EULA is a contract between the player and the game development company that describes how the player may participate or play in the game. Should a player act outside the acceptable terms of the EULA, the game development company reserves the right to punish the player, ban or even permanently terminate him from game-play.<sup>84</sup> This includes blocking the human player's internet line from accessing the game—this prevents the player from building a new avatar.<sup>85</sup>

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<sup>81</sup> Academic papers and gaming scholars flex their knowledge only enough to beg the questions: whether perpetrators have the freedom to act in a virtual environment just because computer code makes it possible? Whether real world law has a place in a virtual world? Whether games even need laws? How should perpetrators be punished?

<sup>82</sup> Games focus on the perpetrators by setting up EULAs aimed at setting forth standards of game conduct with consequences such as penalties and even permanent banning.

<sup>83</sup> See Davies, *supra* note 78 (“These complex and persistent worlds are particularly vulnerable to negative behaviour, not only because they offer more rules to break than the average first-person shooter, but also because there is more at stake for players. The gap between virtual worlds and real life is constantly closing, with developers encouraging in-game economies with currencies that translate to real-world pounds and dollars. A player might craft a rare item that can be sold via eBay; if such digital property is stolen, the player is effectively losing real money.”).

<sup>84</sup> See Second Life - Community Standards, <http://www.secondlife.com/corporate/cs.php> (last visited Nov. 2, 2007); see also World of Warcraft Forums, <http://forums.worldofwarcraft.com/forum-coc.html?sid=1> (last visited Nov. 4, 2007).

<sup>85</sup> Second Life - Community Standards, *supra* note 84; World of Warcraft Forums, *supra* note 84.

[¶47] In Second Life, a three strikes policy permanently terminates a player's account after three violations of its community standards.<sup>86</sup> Virtual crimes are becoming such a significant problem in game-play that Second Life features a "Community: Police Blotter."<sup>87</sup> The blotter is a public bulletin board detailing the crimes committed in the specific communities and the corresponding punishment received. However, the griefers' names are not published. The varying levels of bans stem from a warning to a suspension of three to seven days or so.<sup>88</sup>

[¶48] In the MMORPG Roma Victor,<sup>89</sup> crucifixion is the punishment for griefing. Cynewulf was the first avatar publicly hung on a cross for seven days because it participated in gang-killing new players who came into the game. Kerry Fraser-Robinson, CEO of Roma Victor, states, "[W]e feel that applying this punishment to cheats, hackers and other virtual wrongdoers is not only appropriate, but also adds to the gaming experience by resonating with classical history."<sup>90</sup>

[¶49] And in late December 2006, Blizzard Entertainment sent 105,000 WoW owners the following message: "Merry Christmas, you've been banned."<sup>91</sup> Various players were banned from the game as a result of cheating and griefing throughout the virtual space affecting other

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<sup>86</sup> Second Life - Community Standards, *supra* note 84.

<sup>87</sup> Second Life - Community: Police Blotter, <http://www.secondlife.com/community/blotter.php> (last visited Nov. 4, 2007).

<sup>88</sup> *Id.*

<sup>89</sup> See Roma Victor MMORPG, <http://www.roma-victor.com/> (last visited Nov. 9, 2007).

<sup>90</sup> Posting of Mark M. to MMORPG Blog, *MMORPG Griefer Crucified In Game as Punishment*, <http://mmorpg.qj.net/index.php?pg=49&aid=12179> (Mar. 23, 2006); see also *Britain to Witness First Crucifixion for Almost 2,000 Years*, MMOSITE.COM, <http://news.mmosite.com/data/p/u/2006/03/23/1665892620.html> (last visited Nov. 2, 2007).

<sup>91</sup> Posting of Uros "2Lions" Jojic to ActionTrip, *Another Round of Word of Warcraft Bannings*, [http://www.actiontrip.com/rei/comments\\_news.phtml?id=122206\\_6](http://www.actiontrip.com/rei/comments_news.phtml?id=122206_6) (Dec. 22, 2006, 10:35 EST).

players' game-play.<sup>92</sup> Records show that before this mass ban, another 30,000 players were banned for cheating in May 2006.<sup>93</sup>

[¶50] Evidently, game developers are combating virtual crimes on their own front through their EULAs. However, even with seemingly straightforward punishment systems, crimes are persisting, and likely, rising as the games gain popularity.<sup>94</sup> Perhaps game developers do not have the manpower, time, nor ability to police the worlds;<sup>95</sup> nor can they foresee or define crimes that lie somewhere between creative expression (vis-à-vis computer code manipulation)<sup>96</sup> and malicious intent to grief. Linden Lab, for instance, realizes that in-world crimes are occurring but chooses not to take egregious action: "Linden Labs [sic] has always tried to take a hands-off approach to regulation and in-world policing."<sup>97</sup> Or maybe the current punishment systems are simply too lax and aggrieving avatars do not anticipate major consequences.

[¶51] The griefers' perspective on crime is irrelevant at this point though. At issue are the victims: aggrieving avatars' *lives* are affected including their respective players. Conceivably if victimized avatars had a voice in the process—a right to be heard, to directly face the griefers, and to seek remedies—then griefers would be more wary of wreaking havoc on others' well-being and property. There is no doubt that the consequences of public shaming and direct retribution are far worse than a third party slap on the wrist.

### C. The Crimes

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<sup>92</sup> *Id.* Such an effect included gaining an unfair advantage over other avatar combatants in the game through the use of more advanced weaponry and the farming of gold. *Id.*

<sup>93</sup> Jeremy Reimer, Blizzard Bans 30,000 World of Warcraft Accounts, ARS TECHNICA, June 12, 2006, <http://arstechnica.com/news.ars/post/20060612-7033.html>.

<sup>94</sup> See e.g., Stephen Foley, *Game on: Criminals Set Sights on Virtual Realities*, THE INDEPENDENT Online Edition, Dec. 31, 2006, <http://news.independent.co.uk/business/news/article2114404.ece>.

<sup>95</sup> See Hunter & Lastowka, *supra* note 73, at 23 ("Designers and coders can't anticipate every possible way of circumventing coded restrictions on behavior.").

<sup>96</sup> *Id.* ("Unlike the real world, of course, virtual worlds are representational creations constructed of human-written code that designers can manipulate with uncommon precision.").

<sup>97</sup> See Foley, *supra* note 94.

[¶52] The virtual game crimes range from petty fraud to defamation to property damage to outright wide-range terrorism. Whether the crimes committed in a virtual world cause avatar or virtual property damages, they are very much patterned like real world crimes and torts. For instance, “[a]ny type of commercial dispute that could arise in real life could arise in Second Life” because “[t]hese cases involve real money.”<sup>98</sup> And indeed, besides the damage to reputation and person, the crimes generally have an adverse pecuniary effect. Arguably, damage to reputation ultimately has an affect on the individual’s prospective profit-share also. Below is simply a snapshot of some actual virtual crimes capable of adversely affecting other avatars’ well-being.

[¶53] In EVE-Online the policy is simple: “[w]hatever you do in-world is at your own risk.”<sup>99</sup> It has a completely permissive attitude towards sharp dealing, player-killing, and even outright scams.<sup>100</sup> As such, Avatar Cally constructed a bank in Eve Online called the Eve Intergalactic Bank (“EIB”), where players could deposit in-game money (“ISK”) and receive interest on their investments.<sup>101</sup> The EIB, in turn, would use deposits to make investments and profit from the spread in the rates of return between them, very much like a real life bank.<sup>102</sup>

[¶54] In early 2006 Avatar Dentara Rast withdrew all of the other players’ money from the EIB and ran. He netted around 700 billion ISK and another 100 billion in assets.<sup>103</sup> This was

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<sup>98</sup> Stephanie Francis Ward, *Fantasy Life, Real Law*, 93 A.B.A. J. 42, 45 (2007), available at [http://www.abajournal.com/magazine/fantasy\\_life\\_real\\_law/](http://www.abajournal.com/magazine/fantasy_life_real_law/).

<sup>99</sup> Posting of James Grimmelman to Laboratorium, *When Virtual Banks Fail*, <http://www.laboratorium.net/archives/WhenVirtualBanksFail.html> (Aug. 26, 2006).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Tudor Stefanescu, *Eve Online Economy Suffers 700 Billion ISK Scam*, SOFTPEDIA, Aug. 24, 2006, <http://news.softpedia.com/news/Eve-Online-Economy-Suffers-700-billion-ISK-Scam-33737.shtml>.

equivalent to approximately 130,000 United States dollars.<sup>104</sup> Rast’s puppeteer was Kris Adams, who interestingly enough operated another avatar—Avatar Cally! In other words, both Cally and Rast were the same human player: “[u]sing Cally as a frontwoman, the player established the bank, built up its credibility among other players, then transferred all the funds to his other character, Rast . . . .”<sup>105</sup> Rast wrote a post on the EVE Forum messageboard about his malicious thievery and fraud, and he even confessed to the crime in a sixteen minute video.<sup>106</sup> Dentara Rast explained, “The only person involved was me. 1 person. And that one character I used was Cally. Not one person who supported the EIB, worked for the EIB, or was involved in anyway with the EIB was aware of my intentions. I fooled everyone. I win EVE.”<sup>107</sup> He added, “Think of me as a space Robin Hood - ‘steals from the rich and gives to himself’ with my merry band of alts.”<sup>108</sup>

[¶55] Even though Adams’ avatar stole this money, he did not reap any substantial benefits because he never converted the ISK’s to real world dollars. Moreover, he was not punished for his actions because EVE Online’s EULA did not restrict such a crime.

[¶56] Still, victims of the embezzlement ranged from big “corporations” in the game to individuals who spent years building a wealth to invest. They were left stranded with no relief and no resolve. One blogger, so emotionally and financially sparked by this treachery, stated, “[T]hat dentara rast guy scammed me outta nearly 20 billion ISK that took me almost 2 years to

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<sup>104</sup> Posting of sonicdevo to Digg.com, *Largest MMO Heist Ever?*, [http://digg.com/gaming\\_news/Largest\\_MMO\\_Heist\\_Ever\\_EVE\\_Online\\_700bn\\_ISK\\_130\\_000\\_USD](http://digg.com/gaming_news/Largest_MMO_Heist_Ever_EVE_Online_700bn_ISK_130_000_USD) (Aug. 20, 2006).

<sup>105</sup> Gupta, *supra* note 50.

<sup>106</sup> Posting to Google Video U.K., *Dentara Rast aka Cally Confesses to EIB Scam*, <http://video.google.co.uk/videoplay?docid=-1993624284569945666> (Aug. 20, 2006) (In this video, Dentara Rast makes fun of the community and reveals that he is a pirate who once held the highest bounty in the game.).

<sup>107</sup> Posting of Dentara Rast to EVE Insider Forums, <http://myeve.eve-online.com/ingameboard.asp?a=topic&threadID=381340> (Aug. 20, 2006, 01:32:00); *see also* Stefanescu, *supra* note 103.

<sup>108</sup> Posting of Dentara Rast to EVE Insider Forums, <http://myeve.eve-online.com/ingameboard.asp?a=topic&threadID=381340> (Aug. 20, 2006, 03:44:00).

build up. I hope he dies of testicular cancer . . . .”<sup>109</sup> Another blogger lamented his frustration with the game developer, who failed to take action: “People might sue ‘Cally’ - That would then take its due course. Break the law, get busted. The devs need to empower people in the game to make and uphold the law.”<sup>110</sup>

[¶57] While wishing misfortune upon griefers may be a form of relief for some victims, it likely will not make them whole again. Unfortunately, more extreme measures have been taken as a result of virtual game crime. In 2005, a virtual game player killed another player in China for selling a cyber-sword “saber” used in the game, Legend of Mir 3.<sup>111</sup> The dispute arose between the two real-life players, Qiu Chenwei and Zhu Caoyuan, because Zhu sold a virtual sword for one thousand dollars after Qiu had simply lent him the sword to play.<sup>112</sup> Zhu refused to return the property or the proceeds back to Qiu.<sup>113</sup> In response, Qiu reported the conversion to the police; however, the Chinese police said the “saber” was not a real tangible item that was protected by law and, as a result, were unable to do anything.<sup>114</sup>

[¶58] Qiu could no longer wait for payment, so he broke into Zhu’s home and fatally stabbed Zhu repeatedly with a knife.<sup>115</sup> Qiu is now spending life in prison.<sup>116</sup> Had a venue been available for Qiu (and his avatar’s rights) to have his day in a court or a relief mechanism setting, then perhaps Zhu would still be alive today.

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<sup>109</sup> Posting by Eve Player That Was Scamzzored to MMPORG Blog, <http://mmorpg.qj.net/Biggest-scam-in-EVE-Online-history/pg/49/aid/62826/orderby/last> (Aug. 23, 2006).

<sup>110</sup> Posting by Runirokk to MMPORG Blog, <http://mmorpg.qj.net/Biggest-scam-in-EVE-Online-history/pg/49/aid/62826/orderby/last> (Aug. 24, 2006).

<sup>111</sup> *Real-Life Murder in Online Gaming Dispute*, CBC NEWS, Jun. 8, 2005, <http://www.cbc.ca/world/story/2005/06/08/gamer050608.html?ref=rss> (last visited Oct. 24, 2007); *see also* Legend of Mir 3, <http://www.lom3.com/> (last visited Jan 20, 2007).

<sup>112</sup> *Real-Life Murder in Online Gaming Dispute*, *supra* note 111.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*; *See also Chinese Online Game Player Charged with Killing Competitor*, ASSOCIATED PRESS, Mar. 30, 2005, <http://english.sina.com/china/1/2005/0330/26059.html>.

<sup>116</sup> *Id.*

[¶59] Virtual crimes are not just limited to conversion or extortion. Assault and battery seem to be a prevalent problem as well. For instance, in August 2005, a Chinese exchange student was arrested in Japan for using “bots”<sup>117</sup> to run virtual stick-ups in the Lineage II: The Chaotic Chronicle online game,<sup>118</sup> stealing items from players then reselling them on eBay.<sup>119</sup> “He used game bots . . . to beat up and rob other players' characters . . . .”<sup>120</sup> Several players had their characters beaten and robbed of valuable virtual objects.<sup>121</sup> The victimized avatars were unable to do anything about it nor were they able to find relief after the fact.

[¶60] Similarly, in mid-Dec 2006, Second Life millionaire avatar Anshe Chung was assaulted, battered, and defamed by a horde of “animated flying penises.”<sup>122</sup> She was on stage in Second Life doing a live interview with CNET<sup>123</sup> when she was “marred by a penis-bomb attack” for fifteen minutes.<sup>124</sup> The attack consisted of flying penises and doctored pornographic images. The perpetrators who committed this cyberattack were a group called “Room 101.”<sup>125</sup> The motive, while questionable, is best summed in this recent blog posting: “It's not clear why the griefer attacked, but Anshe Chung is controversial to some Second Life residents for reasons such as inflexibility on land pricing, the signs she has placed in many areas of the virtual world

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<sup>117</sup> Bots are automated characters that have been tweaked. They are software applications that run automated tasks via the internet. They are generally not used for malicious purposes, but can be, in the case of MMORPGs.

<sup>118</sup> See Lineage II: The Chaotic Chronicle, <http://www.lineage2.com/> (last visited Oct. 24, 2007).

<sup>119</sup> Posting of TechWeb Technology News to TechWeb, *Player Robs Virtually, But Nabbed in Reality*, <http://www.techweb.com/wire/ebiz/169500297> (Aug. 22, 2005, 2:24 PM EDT).

<sup>120</sup> *Id.*

<sup>121</sup> *Computer Characters Mugged in Virtual Crime Spree*, MMOSITE.COM, July 7, 2006, <http://news.mmosite.com/content/2006-07-07/20060707012422596.shtml>.

<sup>122</sup> Posting to Google Video, *Second Life Safari: Room 101 vs. Anshe Chung*, <http://video.google.com/videoplay?docid=5387867190768022577&q=Anshe+Chung> (Jan. 5, 2007).

<sup>123</sup> CNET provides news, product reviews, and guides for computers, consumer electronics, and other personal technology products. See CNET, <http://www.cnet.com> (last visited Mar. 1, 2007).

<sup>124</sup> Posting by Tony Walsh to Clickable Culture, *Anshe Chung Courts 'Streisand Effect,'* [http://www.secretlair.com/index.php?/clickableculture/entry/anshe\\_chung\\_courts\\_streisand\\_effect](http://www.secretlair.com/index.php?/clickableculture/entry/anshe_chung_courts_streisand_effect) (Jan. 5, 2007).

<sup>125</sup> Posting of razor to Razorwire, *CNet and Anshe Chung Get Griefed in Second Life by Room 101*, <http://razorwire.warcry.com/news/view/67071-CNet-and-Anshe-Chung-get-griefed-in-Second-Life-by-Room-101> (Dec. 20, 2006, 11:18 a.m.).

that are visible to anyone flying overhead and her ability to get many residents to sell their land to her.”<sup>126</sup>

[¶61] Nothing was done nor could be done to stop this attack. And, Anshe Chung was unable to personally find relief against the perpetrators. Instead, to clear the stink, she attempted to use real world law to mitigate the damage to her reputation.<sup>127</sup> Anshe Chung Studios,<sup>128</sup> a real life company run by Anshe Chung’s human player Ailin Graef and her husband, sent notices to YouTube<sup>129</sup> and other online sites to take down her avatar video/image of the interview based on copyright infringement.<sup>130</sup>

[¶62] Besides superstar real estate mogul Anshe Chung feeling the burn of virtual crime, members of the reality television show “Big Brother”<sup>131</sup> were victimized around the same time period as well. The “Big Brother” cast members had a Second Life debut in December 2006.<sup>132</sup> On their way to the “Big Brother” virtual house in Second Life, they had to walk the red carpet. Upon doing so, they were set on fire by other avatars and caged.<sup>133</sup> The victims suffered from assault, battery, false imprisonment, and even damage to their reputation. And yet, they had no recourse against the perpetrators.

[¶63] In Second Life, terrorist acts have left many players uneasy and Linden Lab in a frenzy. One group of avatars, in particular, the Second Life Liberation Army (“SLLA”), has

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<sup>126</sup> *Id.*

<sup>127</sup> Walsh, *supra* note 124.

<sup>128</sup> Anshe Chung Studios, <http://www.anshechung.com/> (last visited Nov. 5, 2007).

<sup>129</sup> See <http://www.youtube.com> (last visited Mar. 20, 2007).

<sup>130</sup> Daniel Terdiman, *The Legal Rights to Your ‘Second Life’ Avatar*, CNET NEWS.COM, Jan. 5, 2007, [http://www.news.com/2100-1047\\_3-6147700.html](http://www.news.com/2100-1047_3-6147700.html).

<sup>131</sup> See CBS Network Big Brother show at <http://www.cbs.com/primetime/bigbrother7/> (last visited Mar. 20, 2007).

<sup>132</sup> See Big Brother Second Life at <http://www.bigbrothersecondlife.com/> (last visited Mar. 20, 2007).

<sup>133</sup> Posting to TheLastBoss.com, *Big Brother Second Lifers Caged & Burned*, <http://www.thelastboss.com/post.phtml?pk=1768> (Dec. 13, 2006).

assembled to seek political rights and universal suffrage from the *dictator* Linden Lab.<sup>134</sup> Formed in approximately April 2006, the SLLA wants voting rights in Second Life and it will use devious methods to be heard.<sup>135</sup> Avatar Marshal Cahill, the SLLA's political mouthpiece stated in an interview, "We will naturally be branded as terrorists but that is simplistic. We are using the environment, particularly new media, to get our message across."<sup>136</sup> In its quest for military dominance, the SLLA has attacked various areas and players. In August 2006, the terrorism took the form of shooting potential customers at the Second Life American Apparel store "causing the customers to be knocked out of the area, thus preventing purchases."<sup>137</sup> Though the *physical* damage is temporary,<sup>138</sup> the affects were nonetheless lasting for the players and the American Apparel establishment. The American Apparel location is well-known for the attack and this may have some negative backlash—citizens may be less inclined to shop at the store. Moreover, citizens of Second Life have to be wary of potential future attacks that could affect their well-being and property. The SLLA is also considering a virtual kidnap in the near future.<sup>139</sup> This, the SLLA members hope, will send a stark message to Linden Lab.<sup>140</sup>

[¶64] Aside from the SLLA, the Patriotic Nigras ("PN") is another terrorist group inside Second Life. However, PN does not have a political motive in mind; rather, it disrupts and

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<sup>134</sup> Wayne Porter, *Exclusive Interview with Second Life Liberation Army Leader (SLLA)*, REVENUE NEWS, Dec. 4, 2006, [http://www.revenews.com/wayneporter/archives/2006/12/exclusive\\_interview\\_with\\_second\\_life\\_liberation\\_ar.html](http://www.revenews.com/wayneporter/archives/2006/12/exclusive_interview_with_second_life_liberation_ar.html).

<sup>135</sup> *Id.*; see also Second Life Liberation Army, <http://secondlla.googlepages.com/> (last visited Nov. 3, 2007) (According to the SLLA's website, the SLLA is the "military wing of a national liberation movement within Second Life" dedicated to establishing "basic political 'rights' for avatars in Second Life.").

<sup>136</sup> Pixeleen Mistral, *Linden Hits the Bottle After SLLA Assault on American Apparel*, SECOND LIFE HERALD, Aug. 23, 2006, [http://www.secondlifeherald.com/slh/2006/08/aftermath\\_of\\_sl.html](http://www.secondlifeherald.com/slh/2006/08/aftermath_of_sl.html).

<sup>137</sup> *Second Life Liberation Army' Targets Brands*, MARKETINGVOX, Dec. 7, 2006, <http://www.marketingvox.com/archives/2006/12/07/second-life-liberation-army-targets-brands/>.

<sup>138</sup> See Glenn Chapman, *Virtual Terror Strikes Second Life*, YAHOO! NEWS, Feb. 24, 2007, [http://news.yahoo.com/s/afp/20070224/ts\\_alt\\_afp/usitinternetattacks\\_070224005516](http://news.yahoo.com/s/afp/20070224/ts_alt_afp/usitinternetattacks_070224005516) ("The virtual bomb blasts in Second Life explode in hazy white balls, blotting out portions of a screen and battering nearby avatars, animated figures that are residents' proxies in the virtual world. The disruptions are brief and do not cause lasting damage in Second Life, according to Linden.").

<sup>139</sup> Porter, *supra* note 134.

<sup>140</sup> *Id.*

vandalizes for the sake of “lulz”—funny or interesting internet content.<sup>141</sup> On Monday, February 26, 2007, PN members, some sporting “Bush ‘08” tags, vandalized Democratic candidate John Edwards’ Second Life Headquarters.<sup>142</sup> “They plastered the area with Marxist/Leninist posters and slogans, a feces spewing obscenity, and a photoshopped picture of John in blackface, all the while harassing visitors with right-wing nonsense and obscenity-laden abuse of Democrats in general and John in particular.”<sup>143</sup> Edwards and his team were unable to find the culprits and seek damages for the vandalism. Nor was Linden Lab successfully able to take disciplinary action against the anonymous wrongdoers. However, PN, posted on John Edwards’ blog claiming credit for the attack on his campaign headquarters. The lasting harm is that the Headquarters now has to develop stronger safeguards against potential terrorists who will vandalize, destroy, and disturb the peace.

[¶65] Besides assault, battery, and the other commonplace criminal acts, residents of virtual worlds commonly complain to game developers of sexual harassment when their avatars are propositioned by others and involuntarily grabbed or kissed.<sup>144</sup> Others complain of assault by offensive and violent verbal and physical sexual abuse. Complaints of sexual harassment and assault are often posted on Second Life’s police blotter. Gamers relay their real-life fetishes into a virtual world and prey on other avatars. As one Second Life community member bizarrely put it, “It would be more entertaining if you could cyber-rape unwilling Second Life players. Maybe that will teach them not to buy such slutty clothes for their avatars.”<sup>145</sup> Moreover, WoW players

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<sup>141</sup> EncyclopaediaDramatica.com, Lulz, <http://www.encyclopediadramatica.com/index.php/Lulz> (last visited Nov. 4, 2007).

<sup>142</sup> Lou Cabron, *John Edwards’ Virtual Attackers Unmasked*, 10 ZEN MONKEYS, Mar. 5, 2007, <http://www.10zenmonkeys.com/2007/03/05/john-edwards-virtual-attackers-unmasked/>.

<sup>143</sup> Posting to GamePolitics.com, *John Edwards Second Life Campaign HQ Vandalized*, <http://gamepolitics.com/2007/03/01/edwards-sl-hq-trashed/> (Mar. 1, 2007, 4:13 a.m.).

<sup>144</sup> Reid, *supra* note 68, at 333-34.

<sup>145</sup> Posting of Mxyzptlk to Destructoid, <http://www.destructoid.com/second-life-now-with-more-rape--28711.phtml> (Dec. 18, 2006, 23:59).

are also complaining of sexual harassment and lewd conduct during game-play. As one female WoW gamer posts in her blog: “Being asked by a stranger for sex will not make most women feel attractive . . . in fact, in most cases it will result in the opposite. It is a horribly uncomfortable feeling, takes away your sense of safety . . . makes us feel unwelcome.... [B]eing asked for cybersex from someone you don’t even know is insulting, and the idea that people would just walk up to a girl and ask that, when said girl might be a mere child, is revolting.”<sup>146</sup>

[¶66] One of the first and most well-known virtual crimes was “A Rape in Cyberspace” reported by journalist and author Julian Dibbell in 1993.<sup>147</sup> In a crowded virtual room, the avatar Mr. Bungle used a game feature to control the actions of other users, forcing several avatars to perform violent and sexual acts. The “rape” took place in LambdaMOO—a multi-user dungeon (MUD). It was essentially a real-time non-consensual textual description of the violent sexual mutilation of an online community member to other community members. The “rape” was the display of graphic and offensive textual sentences that seemed to originate from the victim. “One user . . . called his voodoo doll activities ‘a breach of civility’ while, in real life, ‘post-traumatic tears were streaming down her face.’”<sup>148</sup> As commentators have noted, Mr. Bungle’s acts were insufficient to form a basis for criminal prosecution.<sup>149</sup>

[¶67] Users of LambdaMOO including Mr. Bungle met for nearly three hours to determine his punishment. However, nothing was resolved. Instead, Mr. Bungle was “toaded” by a majority decision of the community, meaning that his avatar was replaced with a powerless

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<sup>146</sup> Posting of Jen to (Semi) Intellectual Blathering, *Sexual Harrassment in World of Warcraft*, <http://jenwrites.wordpress.com/2006/10/24/sexual-harrassment-in-world-of-warcraft/> (Oct. 24, 2006).

<sup>147</sup> Julian Dibbell, *A Rape in Cyberspace*, VILLAGE VOICE, Dec. 21, 1993, at 36, available at [http://www.juliandibbell.com/texts/bungle\\_vv.html](http://www.juliandibbell.com/texts/bungle_vv.html).

<sup>148</sup> A Rape in Cyberspace - Wikipedia, [http://en.wikipedia.org/wiki/A\\_rape\\_in\\_cyberspace](http://en.wikipedia.org/wiki/A_rape_in_cyberspace) (last visited Nov. 2, 2007) (Despite the passionate emotion, including anger, voiced by many users on LambdaMOO, none were willing to punish Mr. Bungle through real-life means.).

<sup>149</sup> *Id.*

and voiceless toad.<sup>150</sup> Later on, one of LambdaMOO's "wizards" (a master-programmer of the game) decided to terminate Mr. Bungle's account. From then on, the game's players could institute the "@boot" command where players temporarily disconnect disruptive guests from the server. This was a successful solution as it gave players direct access to relief. However, it does not eliminate the terror struck in the victimized: "In the spring 2007 issue of the *Indiana Law Journal*, Erez Reuveni cites a case of assault in a text-based environment, acknowledging that females avatars who experience virtual sexual harassment (and even rape) report suffering real-world anger and grief."<sup>151</sup> Thus, though it is a virtual environment, the repercussions are far greater permeating into the real world player's life.

#### D. Avatar Reaction and Cross-Over to the Real World

[¶68] Undoubtedly, virtual crimes occur in varying degrees. Whether or not the perpetrator(s) are punished is a responsibility the game developers end up shouldering. However, game developers generally have not provided a sense of relief for victims. As a result, real world law enforcement and courts are starting to see victim complaints arising from a virtual world game setting.

[¶69] For instance, between July 4 and July 9, 2007, three victims in Second Life were scammed for a combined \$10,000 by avatar Juggernaut Stoklitsky in a shady real estate transaction deal.<sup>152</sup> Stoklitsky essentially advertised an island for sale several times, ending up selling the virtual land to six different individuals. Only the first sale was legitimate. Real life victim, Jim Gervais, paid Stoklitsky 1,850 dollars but upon transaction, suspected something was

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<sup>150</sup> Lastowka & Hunter, *supra* note 64, at 70; see also Elizabeth Reid, *Hierarchy and Power: Social Control in Cyberspace*, in COMMUNITIES IN CYBERSPACE 107, 115-16 (Marc A. Smith & Peter Kollock eds., 1999).

<sup>151</sup> Michael J. Bugeja, *Second Thoughts About Second Life*, CHRON. CAREERS, Sep. 14, 2007, <http://chronicle.com/jobs/news/2007/09/2007091401c/careers.html>.

<sup>152</sup> Tateru Nino, *There Can Only Be One. A Perilous Tale of Island Transfer*, SECOND LIFE INSIDER, July 20, 2007, <http://www.secondlifeinsider.com/2007/07/20/there-can-be-only-one-a-perilous-tale-of-island-transfer>.

wrong when he saw another advertisement for the island that was just sold to him.<sup>153</sup> Through his own investigation—logging on to his other Second Life profiles and bidding for the island—he realized he was being scammed. Though he and the other victims complained to Linden Lab, the company simply responded that it was investigating the situation. “Linden Lab’s head concierge Jack Linden sent a message to all the victims of this scam on July 17, stating ‘despite our best efforts we have not been able to recover funds from [Stoklitsky].’”<sup>154</sup> As a result, the victims were left out-of-pocket and upset. Linden Lab has not taken any action, but rather echoes its general sentiments with respect to transactions gone badly: “Linden Lab does not generally get involved in private deals between residents.”<sup>155</sup> Instead, the victims are now attempting to work with the real world Federal Bureau of Investigation (“FBI”) and local law enforcement to seek resolve.<sup>156</sup>

[¶70] Moreover, on the judicial side, the first case between avatars finally took place in the real world court system, specifically in a Federal Eastern District of New York filed at the end of October 2007. In the case of *Eros LLC v. Simon*, six plaintiffs who are content creators for Eros LLC claimed that Thomas Simon stole computer code to replicate their adult-themed products that they created and sell in Second Life.<sup>157</sup> As a result of the knock-offs, Eros LLC purported that it has lost significant sales, especially since the products are among the best-selling of the adult-themed products in Second Life. The plaintiffs even sought a settlement of \$7,000 in damages.<sup>158</sup> Rather, on December 4, 2007, the parties reached a settlement wherein Simon would only have to pay the original \$525 in damages, and the parties involved must keep

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> See Complaint, *Eros, LLC v Simon*, No. 1:2007cv04447 (E.D.N.Y. filed Oct. 24, 2007) available at [http://www.virtuallyblind.com/files/07\\_10\\_24\\_eros\\_et\\_al\\_v\\_simon\\_complaint.pdf](http://www.virtuallyblind.com/files/07_10_24_eros_et_al_v_simon_complaint.pdf).

<sup>158</sup> Eric Reuters, *Settlement Reached in Kenzo Copyright Case*, SECOND LIFE REUTERS, Dec. 4, 2007 <http://secondlife.reuters.com/stories/2007/12/04/settlement-reached-in-kenzo-copyright-case/>.

the discussions in settlement confidential. “I knew that if they had anything on me, they would have asked for more than US\$7000,” Simon said. “I made US\$525 playing a video game, so I now I break even, it’s not the end of the world.”<sup>159</sup>

[¶71] The lawyer for the plaintiffs, Frank Taney, warned that such a case simply highlights the demand for real world law applicability to the virtual world platform. “Some people think it’s a joke and real-life laws don’t apply to Second Life.... There will come a point there will no longer be any dispute.”<sup>160</sup>

[¶72] Even so, it seems that players are unwilling to resort to real world court adjudication right off the bat. The plaintiffs in the case insist that a lawsuit was not what they preferred. “We originally tried to go through [Second Life Provider] Linden Lab,” says one of the plaintiffs. “Everybody filed DMCA [takedown] notices. We filed support tickets and abuse reports. We even sent a letter to Robin [Harper, Linden Lab’s Vice President of Marketing & Community Development] and copied Philip [Rosedale, Linden Lab’s CEO]. We got nothing.”<sup>161</sup>

#### E. Virtual Property is like Real-World Property

[¶73] Certainly, Taney’s concern is shared by many, though there are a likely number of opponents who support Simon’s position also. Many players (especially those who have been victimized, like Eros LLC’s content creators), readers, and intellectuals believe that real world law should make a place for virtual world maladies. However, in order for players to find resolve in the real world court system, virtual property must be viewed as a property form, which

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<sup>159</sup> See Reuters, *supra* note 158.

<sup>160</sup> *Id.*

<sup>161</sup> Benjamin Duranske, *Six Major Second Life Content Creators Sue Alleged Copyright Infringer in NY Federal District Court*, VIRTUALLY BLIND, Oct. 27, 2007, <http://virtuallyblind.com/2007/10/27/content-creators-sue-rase-kenzo/>.

generally means it need be tangible or have a corporeal form.<sup>162</sup> Several theories, in fact, provide the basis that virtual property, such as those that exist in WoW or Second Life, carry the same properties, like ownership and transferability, as real world property.

[¶74] Fairfield<sup>163</sup> makes a compelling argument that real world law should apply to virtual worlds with respect to virtual property matters.<sup>164</sup> Essentially he argues that intangible virtual property shares the same three characteristics as real world property: rivalrousness, persistence, and interconnectivity.<sup>165</sup> As a result of these shared characteristics, players should have redress from virtual property damages if the in-game world does not provide an outlet for recovery and the EULA appears unenforceable under real world legal principles. After all, players have rights to property too even if the game developers do not think so.

[¶75] Moreover, legal scholars F. Gregory Lastowka and Dan Hunter pitch in with a more pragmatic approach to property, citing specifically to Philosopher John Locke's conception of property.<sup>166</sup> Locke stood for the principle that every person owns the fruits of his own labor. If a person uses his labor to create something from that which is available to all, then that person has property rights to his creation.<sup>167</sup> As such, if virtual assets are created by players from tools

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<sup>162</sup> See David P. Sheldon, *Claiming Ownership, But Getting Owned: Contractual Limitations on Asserting Property Interests in Virtual Goods*, 54 UCLA L. REV. 751, 758 (2007)

<sup>163</sup> See *supra* note 75.

<sup>164</sup> See Joshua A.T. Fairfield, *Virtual Property*, 85 B.U. L. REV. 1047, 1053 (2005).

<sup>165</sup> See *id.* at 1053-55. The first characteristic is rivalrousness. *Id.* at 1053-54. "Rivalrousness, in the physical world, lets the owner exclude other people from using owned objects." *Id.* Accordingly, when it is obvious through action or exchange that one avatar owns certain plots of property or in-game items, this excludes another avatar from owning that virtual property. The second characteristic of virtual worlds, persistence, also bolsters the argument that virtual objects share real world property traits. In the physical world, persistence ensures that an individual's investment lasts. *Id.* at 1054. Thus, "[i]f [you] put [a] pen down and leave the room, it is still there." *Id.* Similarly, in virtual worlds, virtual property does not cease to exist when the player logs out of the game. The last characteristic that virtual worlds share with the physical world is interconnectivity. *Id.* "Two people in the same room experience exactly the same objects. Objects in the real world can affect each other, by the laws of physics." *Id.* Similarly, virtual property can be made interconnected so that although one person can control it, others may experience it. As such, this shared experience and interactivity with a virtual object is interconnectivity.

<sup>166</sup> See Hunter & Lastowka, *supra* note 64 at 29.

<sup>167</sup> JOHN LOCKE, SECOND TREATISE OF GOVERNMENT, in TWO TREATISES OF GOVERNMENT 27 (Legal Classics Library 1994) (1698).

available in the game, then conceivably such assets should be the property of its creator. And with that virtual property, thus, comes property rights, including real world like opportunities such as court proceedings.

#### F. Virtual Games are Limited to the Virtual World

[¶76] Despite the supposition that virtual property can cross-over to real world relief, many players, game developers, intellectuals, and readers strongly resist this position and approach. As this section details, there are various reasons as to why the real world cannot cross into the virtual world arena.

[¶77] First, game developers largely reside in the *Simon* camp, which is to say that such virtual platforms are merely games and should not be considered anything further than a pastime. Thus, it is difficult to apply real world laws inside the games. As legal scholars Hunter and Lastowka point out:

Because adversity and violence are features of these worlds—and not just side effects—it is wrong to think of crime as an unfortunate byproduct of virtual societies. Crime is simply an extension of many of the same freedoms that make these worlds so appealing to their inhabitants. Game designers have their hands tied.<sup>168</sup>

Essentially, avatars should be free to act as they wish in a virtual environment because nothing is real. It is a game after all. Everything is computer code-based, all the characters are merely symbols of a human player, and nothing is lasting. As such, pain or grief is an artificial response that should not be quelled with a seething punishment. And as for those victimized, they assumed the risk of being targeted by the mere act of entering a *gaming* environment.

[¶78] Second, real world law cannot handle virtual world issues because it is a difficult question of jurisdiction and choice of law—what state’s or country’s laws will prevail in the vast virtual arena? After all, a crime in one country is not necessarily a crime in another. A

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<sup>168</sup> *Id.*

meaningful example of this problem is the recent controversy over “age-play” in which players request to have sex with others who dress up as child avatars.<sup>169</sup> In May 2007, German officials launched an investigation against players who were “reportedly buying sex with other players posing as children, as well as offering child pornography for sale.”<sup>170</sup> If found, the perpetrators would likely face up to five years in prison in Germany. However in the United States, virtual child pornography is not a crime.<sup>171</sup> The Supreme Court has held that a complete ban on virtual images of children violates the First Amendment Free Speech protection.<sup>172</sup> Linden Lab has cooperated with German authorities and banned the accounts of the two players who controlled the avatars in the simulated sexual acts between the adult and minor.<sup>173</sup>

[¶79] Even so, this will likely present jurisdictional challenges should such disputes come to fruition in real world courts. Should Linden Lab, or other game developers for that matter, have to monitor global laws to ensure it does not offend the countries’ independent laws? More importantly, which country’s law will dictate the rules and potentially the cases? Hypothetically, how would the victim of the German age-play incident seek relief and take to a German court the perpetrator if the perpetrator were a United States citizen? Would he have to be extradited? In the eyes of U.S. law, the defendant may not have broken any laws. However, Germany and the victim might see it differently. If the grieving occurs to a U.S. plaintiff by a foreign defendant, how would that defendant be served and summoned to a U.S. court? And really, will such a

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<sup>169</sup> Kate Connolly, *Second Life in Virtual Child Sex Scandal*, GUARDIAN, May 9, 2007, available at <http://www.guardian.co.uk/germany/article/0,,2075340,00.html>.

<sup>170</sup> *Id.*

<sup>171</sup> See *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, at 256 (2002) (holding unconstitutional the ban on virtual child pornography in the Child Pornography Prevention Act of 1996). In holding the statutory provision banning virtual child pornography unconstitutional, the Supreme Court explained that “[t]he mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it.” *Id.* at 253.

<sup>172</sup> *Id.* at 256.

<sup>173</sup> See Benjamin Duranske, *Second Life Child Pornography Allegations Draw International Press Attention*, VIRTUALLY BLIND, May 9, 2007, <http://virtuallyblind.com/2007/05/09/ageplay-second-life-worldwide>.

long-drawn litigation battle, or rather an *attempt at battle*, be worth the virtual damage in dispute? Resolving these questions presents significant issues.

[¶80] Another problem with bringing virtual world matters in a real world forum is that it will further clog the justice system dockets. “The virtual world is just swarming with lawsuits waiting to happen.”<sup>174</sup> And without any defined sets of precedents, state courts, federal courts and circuits, will have a difficult time justifying their decisions. This will especially be burdensome if evidentiary issues come into play. Perhaps Washingtonpost.com writer, Emil Steiner, put it best when he blogged about the *Eros LLC, et al v. Simon* matter:

Still, these virtual-world real-world lawsuits can get pretty tricky. How and to what extent should real laws apply in Second Life? For instance, Simon claims that the plaintiffs found their “evidence” by taking pictures inside his Second Life home, which they entered without warrant or permission. Should that evidence be considered admissible? And since Simon allegedly exploited holes within the Second Life platform to create his duplicate products, is Linden Labs [sic] also liable somehow? The only hope may be if Second Life, which has its own culture, proto-customs and currency, could come up with some virtual solution. If not, there may be virtually millions of other such lawsuits popping up... for real.<sup>175</sup>

Undoubtedly, procedural and evidentiary matters are already complicated with respect to the real world. What will be admissible or inadmissible? Consequently, it may only become more obscure with virtual world issues because most lawyers and judges are not well-studied and in-tune with this new age social phenomenon.

[¶81] Moreover, court fees and attorney fees will be a problem. A virtual dispute, like in *Simon*, that costs thousands or even millions of game dollars may only translate to \$525 real world dollars, but real world attorney’s fees of at least \$5,000.<sup>176</sup> The problem here is that real

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<sup>174</sup> Posting of Lore Sjöberg to Wired Commentary, *Litigate, Castigate, Investigate: Second Life Kerfuffles*, [http://www.wired.com/culture/lifestyle/commentary/alttext/2007/07/alttext\\_0711](http://www.wired.com/culture/lifestyle/commentary/alttext/2007/07/alttext_0711) (July 11, 2007, 2:00 a.m.).

<sup>175</sup> Emil Steiner, *Second Life Players Bring Virtual Reality to Court*, WASHINGTON POST BLOG, Oct. 29, 2007 [http://blog.washingtonpost.com/offbeat/2007/10/second\\_life\\_players\\_bring\\_virt.html](http://blog.washingtonpost.com/offbeat/2007/10/second_life_players_bring_virt.html).

<sup>176</sup> See Reuters, *supra* note 158.

world attorneys, who charge by real world industry standards, will likely continue to charge such fees in a virtual world dispute even though the currency values of these two dimensions are drastically disparate. The attorney's fees will still be significant in the real world because the attorney(s) will be expending the same hours and duties to cater to his client. Otherwise, it may not be rational for the attorney(s) to expend significant resources and time for such small claims. Even so, the fees charged will not be proportional to the amount in dispute. Who here will have to suffer then? Will the lawyer have to reduce his rates to a reasonable *virtual* fee or will the aggrieving party have reduce his expectations as to quality of representation or of trust with the attorney? These are not questions with easy answers.

[¶82] To supplement the practical perspectives of real world legal systems not translating well into the virtual world platforms, there is also the well-known academic position and view called the Law and Borders Thesis.<sup>177</sup> This supposition provides that : (1) “Virtual worlds are separate places;” and (2) “Real-life governments shouldn’t regulate what happens in separate places; *ergo*” (3) “Real-life government shouldn’t regulate what happens in virtual worlds.”<sup>178</sup> Because virtual worlds have no physical real world borders then real world laws can not and should not apply to the virtual world. “[G]overnments can control what happens in their territory. But their territory doesn’t include virtual worlds. The spatiality of the metaphor is not accidental; virtual worlds really are distinct places. People ‘go to’ virtual worlds, and when they do they leave the real world behind in the relevant sense.”<sup>179</sup> Game developers and publishers certainly do not think so either. They do not believe that there should be a cross-over from real

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<sup>177</sup> See Grimmelman, *supra* note 14, at §§ Introduction, Freedom from Law; see also Daniel Terdiman, *Who Governs Virtual Worlds?*, CNET NEWS.COM, Dec. 1, 2006, [http://news.com.com/Who+governs+virtual+worlds/2100-1043\\_3-6140249.html](http://news.com.com/Who+governs+virtual+worlds/2100-1043_3-6140249.html).

<sup>178</sup> Grimmelman, *supra* note 14, at § Freedom from Law.

<sup>179</sup> *Id.*

world law into virtual worlds because virtual worlds are merely games and government intervention would severely damper the developers' autonomy.<sup>180</sup>

[¶83] Thus, while virtual world claims *could* surface in a real world setting, the repercussions may likely far outnumber the benefits. A clogged judicial system, discordant legal bases for prosecution and relief, and a nightmare of procedural issues will simply drive away players from games and create utter chaos for real world courts in various countries. Perhaps the parties in *Simon* sensed the can of worms fiasco and decided to settle the matter privately. Who knows how the court would have reacted to the evidentiary issues, as well as the virtual world claims.

#### IV. AN AVATAR'S RIGHT TO THE COURTS

[¶84] While bringing forth legitimate virtual world claims in a real world setting is not impossible, it carries with it a lot of unanswered questions and heaps of problems. When an individual is victimized, he or she wants to be made whole again. The judicial system has habituated individuals into finding comfort in justice. This comfort in justice should extend to acts occurring in a virtual dimension. The chilling truth is that in-game crimes are hindering a gamer's experience and driving away business for game developers. Terrorist acts, fraud, sexual harassment, and other forms of grief do not make for a positive gaming experience. Victims are often left upset, frustrated, and out of pocket because they are unable to find relief nor resolve in their virtual property losses. Virtual worlds need not become authoritarian, with surveillance

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<sup>180</sup> *See id.* at § Introduction (“The designers who adhere to the ideas of Law and Borders are afraid that real-world governments will censor their content, install virtual wiretaps, and limit playing time, among other interventions. They are afraid that the real world will use law as a tool in a misguided attempt to ‘fix’ virtual worlds. But designers (often the same ones) also often claim complete control over economic activity in their worlds and wish that real-world governments would step in to prevent out-of-world sales of virtual items. They want to use law as a tool themselves.”).

around the clock to restrict an avatar's freedom. Rather, an avatar should have rights to a system that will resolve its problems. If the real world court systems are not yet ready to hear concerned players' virtual property losses, and game developers do not have the time nor the desire to get involved with avatars' autonomy, then who is going to help mediate?

[¶85] Interestingly enough, the idea behind a victim's right to voice his grief and seek relief was tested by Microsoft. In 2003, it released the game, "A Tale in the Desert" giving players the ability to make laws, determine what actions were permissible, and even banned the derelicts.<sup>181</sup> This approach laid the groundwork for a workable system of excluding griefers:

This experiment paved the way for the transference of some responsibility from developers to gamers. Xbox Live's Gamer Card system indelibly links your actions to your account by allowing other players to rate your behaviour. A low enough reputation will mean few people willing to play with you. Griefing has therefore become a relatively minor support issue for Microsoft.<sup>182</sup>

[¶86] In determining how to design a system that will fit within the ambits of this paper, I will model a relief system within Second Life. Not only is this today's largest MMOG, but the financial power and social structures it wields signals a serious need for an in-game legal structure. Furthermore, the crime rate in Second Life is escalating.<sup>183</sup> Robin Harper, Senior Vice President of Community and Marketing at Linden Lab, expressed concern that the size and growth of Second Life will need a formal dispute resolution system both urgent and more complex.<sup>184</sup>

#### A. Second Life's Game Rules

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<sup>181</sup> Davies, *supra* note 78.

<sup>182</sup> *Id.*

<sup>183</sup> See Second Life - Community: Police Blotter, *supra* note 87.

<sup>184</sup> Daniel Terdiman, *Online Feuds a Big Headache*, WIRED NEWS, Nov. 3, 2004, <http://www.wired.com/news/games/0,2101,65562,00.html>.

[¶87] Second Life has a tight EULA in place already to address griefing. The TOS Agreement<sup>185</sup> as well as its respective “Community Standards” Agreement<sup>186</sup> (referred to in Section 4.1 of the Terms of Service) broadly encompass the crimes detailed in this paper. Even still, crimes are increasing. What Second Life fails to provide is a system for avatars to seek relief directly from the griefers or perpetrators. Instead, it continues its hands-off practice toward resident disputes.

[¶88] While Second Life does not list each crime specifically, it has six broad Behavioral Guidelines, “The Big Six.”<sup>187</sup> The first is intolerance, which includes derogatory or demeaning language or images in reference to other Avatars’ race, gender, ethnicity, religion, or sexual preference.<sup>188</sup> The second behavioral guideline is harassment, which includes stalking, threatening, intimidating, or unwelcoming coarse communication or sexual advances and or favors.<sup>189</sup> The third is assault. Shooting, pushing, shoving, or preventing another Avatar from going about its enjoyment in Second Life is prohibited.<sup>190</sup> Then there is disclosure. Avatars have the right to privacy, including gender, religion, age, race, sexual preference, and real-world location.<sup>191</sup> Sharing conversation logs, monitoring conversation logs, or posting conversation logs without an avatar’s consent is also prohibited.<sup>192</sup> The fifth behavioral guideline is indecency, which includes content, communication, or behavior that uses intense strong language or expletives, nudity or sexual content, or strong violence, that are all outside the area rated Mature (M).<sup>193</sup> Lastly, there is disturbing the peace. This involves disrupting scheduled events,

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<sup>185</sup> See Second Life - Terms of Service, <http://www.secondlife.com/corporate/tos.php> (last visited Nov. 2, 2007).

<sup>186</sup> See Second Life - Community Standards, *supra* note 84.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

repeated transmission of undesired advertising content, using objects to slow server performance, and inhibiting other avatars from enjoying life in Second Life.<sup>194</sup>

[¶89] Avatars in Second Life may report other avatars for committing one of the Big Six violations. The Community Standards then set forth a three-level approach for punishment. First, a warning; second a suspension, which is roughly between one to seven days; and, third, banishment from the game. When an account is suspended or terminated, then Second Life may suspend or terminate accounts associated with the breach and any or all other accounts held by the player.<sup>195</sup>

[¶90] Linden Lab and its representatives are the sole punishers. When a victimized avatar reports a complaint, Linden Lab applies the Big Six to determine the crime and to come up with a fair punishment. In-World Representatives, called Liaisons, occasionally address disciplinary problems with a temporary removal from Second Life.<sup>196</sup> But, although Linden Lab reserves the right to resolve disputes between users of Second Life, the Terms of Services also explicitly states that Linden Lab has no *obligation* to do so.<sup>197</sup>

[¶91] Aggrieved avatars are unable to directly confront the perpetrator and seek relief. Instead, Linden Lab is back-logged with stacks of complaints that are unanswered. This creates a ripple effect. Without relief, a player killed for a sword,<sup>198</sup> and another player felt compelled to call the police when her avatar was scammed in a virtual world,<sup>199</sup> and the latest in the Second Life saga are victims suing in a real world court.<sup>200</sup> When players perceive the injustice, they act out of emotion. Absent serious consequences or an individual's *day in court* aggrieved parties

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<sup>194</sup> *Id.*

<sup>195</sup> See Second Life - Terms of Service, *supra* note 185, at §§ 2.6-2.7.

<sup>196</sup> See Second Life - Community Standards, *supra* note 84 (“Warning, Suspension, Banishment” provision).

<sup>197</sup> See Second Life - Terms of Service, *supra* note 185, at § 5.1.

<sup>198</sup> *Real-Life Murder in Online Gaming Dispute*, *supra* note 111.

<sup>199</sup> See Weslander, *supra* note 5.

<sup>200</sup> See Eros LLC, et al v. Simon, *supra* note 157.

may respond in a dangerous and potentially lethal manner. And ultimately, players who lose trust in the game will turn to the game developer's competitors.

## B. The Solution

[¶92] A relief system modeled after a real world legal system will enhance a gamer's in-world experience. It will provide a happy medium between an avatar's "legal" rights (without having to heavily involve the real world legal system) and a deterrent mechanism (without involving the heavy-hand of a game developer restricting an avatar's freedom to act in a virtual environment). Interestingly enough, U.S. Circuit Judge Richard A. Posner who visited Second Life in December 2006, addressed a crowd of avatars and stressed that it was in Linden Lab's interest to ensure due process and other rights.<sup>201</sup>

[¶93] Thus, I propose a two-pronged jurisdictional approach that can be incorporated within the game's EULA. Very much like the Big Six, the relief system will be an outlet for players to resolve their disputes amongst each other, should they choose to do so. To draw an analogy, this would be like the American legal system: the state (or here, the game developer) brings a criminal action against a perpetrator (aggrieving avatar) based on statute or code (the Big Six); the damaged party (aggrieved avatar) may also bring a civil suit against the perpetrator (aggrieving avatar), should the victim (aggrieved avatar) seek redress beyond what the state (game developer) has or has not done to seek justice. Or the state need not get involved at all; the victim may seek relief against a perpetrator when the victim believes he has been damaged.

[¶94] The first tier is the In-Game Justice System (the "IGJ") and the second tier is the Real World Justice System (the "RWJ"). Not only does this scheme benefit the targeted avatar, but it creates a safer and more cohesive community at large. Like the real world, players will

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<sup>201</sup> Alan Sipress, *Where Real Money Meets Virtual Reality, The Jury Is Still Out*, WASH. POST, Dec. 26, 2006, at A01.

find comfort in having somewhere to turn to when game-play turns sour. Aggrieved players need not voice concerns of abuse or loss; however, like the real world legal system, there is an optional venue for justice. Moreover, the design will streamline the rising real world complaints resulting from virtual game world tussles.

1. *TIER 1: The IGJ: Avatar vs. Avatar*

[¶95] The In-Game Justice (“IGJ”) System is, in effect, a mechanism for *avatar* relief. In other words, those avatars victimized by other avatars’ actions can seek relief and find justice in perpetrator wrong-doing within the game world. It works very much like a real world legal system, but the parties are strictly avatar versus avatar. The two forums of the IGJ would be the In-Game Small Claims Court (“ISCC”) and the In-Game Dispute Resolution (“IDR”) forum.

[¶96] The IGJ provides a balance of relief for avatars. Matters can be resolved publicly or they can be handled privately; all party members have a voice and a right to representation; and avatars assist in developing rules, or *precedent*, in a virtual world space. Second Life’s own community members will be able to form their own kind of common law aside the *statutory code* of Community Standards. Certainly, the SLLA would be happy with this newly-found voice for input and participation.

[¶97] Moreover, avatars may seek legal counsel or enlist mediating judges. According to an ABA Journal report, several attorneys and legal scholars have been testing the *legal* waters in Second Life. A real life female lawyer advertises her in-game legal services in Second Life; her work has included representing a “participant for indecent exposure at a virtual location modeled after the Old West.”<sup>202</sup> Another real life lawyer, Bob Van Der Velde, who goes by the Second Life name of Justice Soothsayer, has constructed a replica of the Supreme Court within

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<sup>202</sup> Ward, *supra* note 98, at 45.

Second Life as a way for visitors to view this replica.<sup>203</sup> “Van Der Velde says virtual appeals could take place in his rendition of the court . . . .”<sup>204</sup> Additionally, real life law firms have also set up shop in Second Life. Davis LLP is Canada’s first law firm to open a branch office in Second Life.<sup>205</sup> In the United Kingdom, the firm of Field Fisher Waterhouse established a two-story virtual office in Second Life hoping to provide legal advice on how to conduct business in alternative digital worlds.<sup>206</sup>

[¶98] The process begins with the aggrieved avatar’s right to file an online complaint. He can fill out a simple report detailing the complaint, the perpetrator, the date of the incident, the location, and perhaps any witnesses. The complaint can arise due to trespass, harassment, fraud, theft, or any other type of Big Six-like crimes that Second Lifers consider deviant. Upon filling out the online form, the avatar submits it electronically to a central database at Linden Lab that processes the request and provides procedural directions as to how to proceed with the adjudication process. Moreover, a statute of limitations applies limiting the life of the complaint. This is to ensure fairness so that the alleged perpetrator(s) will be able to recall the alleged misconduct, with evidence, if necessary.

[¶99] And similar to real world disputes, there is a cost associated with bringing a claim to the IGJ.<sup>207</sup> Aggrieved avatars can use their L\$ to pay for the filing of the complaint upon submission to Linden Lab. The fees may also involve the service of process fees, arbitration fees, or court-appointed representation. The L\$ can go towards IGJ administration costs, such as

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<sup>203</sup> *Id.* at 44-45.

<sup>204</sup> *Id.* at 45.

<sup>205</sup> Gillian Shaw, *Vancouver Law Firm Hangs Up Its Virtual Shingle in Second Life*, VANCOUVER SUN, Sept. 25, 2007, available at <http://www.canada.com/vancouvernews/business/story.html?id=9e865c9c-bc7b-4168-adf8-4270a33f7f9c&k=83192>.

<sup>206</sup> Michael Herman & Alex Spence, *First UK Law Firm Opens ‘Virtual’ Office in Second Life*, TIMES ONLINE, Apr. 24, 2007, available at <http://business.timesonline.co.uk/tol/business/law/article1699474.ece>.

<sup>207</sup> See e.g., Orange County, California Superior Court System, <http://www.occourts.org/geninfo/rcdfees.asp#civil> (last visited Nov. 5, 2007).

avatar clerks, avatar judges, and other roles the IGJ seeks to develop. The complainant can also hire counsel for representation. And like the real world legal system, the avatar who loses the matter may have to carry the burden of paying the other party's L\$ fees and attorney's fees.<sup>208</sup>

[¶100] As mentioned, the aggrieved avatar ("plaintiff") has two choices for adjudication in the IGJ. The first is the ISCC, or small claims court. The three main parties in the ISCC process are the victim (plaintiff), the perpetrator (defendant), and the judge or jury. The in-game judge<sup>209</sup> is either one of Linden Lab's in-house counsel members or Second Life's current "Liaisons" who handle disputes or have a legal background that can parallel real world common law matters into a virtual world venue; or, in time, the virtual judge can be popularly elected by the members of the Second Life community. The jury is composed of nine avatar jurors who may serve as jurors voluntarily for L\$. The payment, of course, will come from the filing fees associated with the case. While the American legal system requires individuals to serve as jurors in the real world, Second Life may be able to have the luxury of voluntary jurors because life in Second Life is not so demanding of time. And perhaps some avatars may find interest and joy in serving as virtual jurors. The juror will decide the fate of the defendant in terms of guilty or not guilty, but it is up to the judge to decide on the specifics of the punishment and relief, if any. Of course, there is the issue of fairness, bias, and blind juries. Perhaps a *voire dire* process is implemented to overcome this obstacle.

[¶101] Back to the procedural process, once the defendant is served notice of the complaint, both party members can resolve their disputes on the assigned date and time in a

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<sup>208</sup> See English Rule, BLACK'S LAW DICTIONARY 570 (8th ed. 2004) (The English rule is "[t]he requirement that a losing litigant must pay the winner's costs and attorney's fees.>").

<sup>209</sup> The Virtual Magistrate was the first attempt at dispute resolution. See Virtual Magistrate, Concept Paper (July 24, 1996), <http://www.vmag.org/docs/concept.html>; see also Lucille M. Ponte, *The Michigan Cyber Court: A Bold Experiment in the Development of the First Public Virtual Courthouse*, 4 N.C. J.L. & TECH. 51 (2002); Victoria C. Crawford, Note, *A Proposal to Use Alternative Dispute Resolution as a Foundation to Build an Independent Global Cyberlaw Jurisdiction Using Business to Consumer Transactions as a Model*, 25 HASTINGS INT'L & COMP. L. REV. 383 (2002).

virtual court set up by Linden Lab in Second Life. Or, Avatar Justice Soothsayer's replica of the Supreme Court may be utilized as the court venue.

[¶102] The key ingredient in the ISCC is that it is a public attraction. The cases are public, which means that any avatar may be an audience member and watch the parties resolve the disputes at hand. The rationale behind the public display is the principle of shaming.<sup>210</sup> Under this theory, the mere fact that Second Life community members know that a certain avatar has misbehaved will be enough incentive for this avatar and others not to commit the same or similar crime again. Shaming penalties are a real-world alternative to imprisonment designed to prevent future dangerous acts, rather than punish past action.<sup>211</sup> Such shaming will lead to a higher level of deterrence. Moreover, the utility of the public attraction is the stare decisis<sup>212</sup> phenomenon. IGJ rulings that are public become common law and judicial code, so to speak, for the community. Alternatively, with the public aspect of the case, a defendant may find solace and vindication if he is found not guilty.

[¶103] Once the jurors hear all sides of the matter and are provided ample time to ask questions, they will be given a private room to reach a verdict of guilty or not guilty. Upon such determination, the judge will decide the punishment. This will also include damages wherein the plaintiff can recover his losses, including future potential earnings from loss of reputation or land, for example. The damages, however, will come directly from the defendant. The

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<sup>210</sup> Shaming punishments in the real world have included: ordering convicted burglars to allow their victims to come into their homes and take anything they wanted; requiring offenders to apologize on their hands and knees for their crimes; requiring parents of children who violate the town curfew to place a bumper sticker on their car that proclaims, 'My children are not my responsibility. They are yours.'; publishing the names of offenders in newspapers or on billboards listing the names and the offenses; requiring thieves to wear t-shirts or brightly colored bracelets announcing their crimes. See Catherine Behan, 'Shame On You!', UNIV. CHI. CHRON., Feb. 29, 1996, available at <http://chronicle.uchicago.edu/960229/shame.shtml>.

<sup>211</sup> See Art Hubacher, Comment, *Every Picture Tells a Story: Is Kansas City's "John TV" Constitutional?*, 46 U. KAN. L. REV. 551, 587 (1998).

<sup>212</sup> Stare decisis expresses the notion that prior court decisions must be recognized as precedents.

defendant's assets can be converted, liquidated or frozen, if need be, to pay the plaintiff for his losses.

[¶104] Unlike the real world legal system, however, an appeals process may not be a valuable method of resolution. It could create a backlog of cases and a complicated adjudication process that was not intended. After all, the IGJ is simply a supplement to Linden Lab's current enforcement and relief system. However, a one-time appeals process may be instituted giving Linden Lab the right to review any case that has been misjudged.

[¶105] The other venue available in the IGJ is the IDR system, or in-game dispute resolution. This is an optional forum for dispute resolution should both parties choose this route. IDR is very much like the real world's ADR—alternative dispute resolution.<sup>213</sup> The matter is private, there is no jury, and the judges' fees are higher. Because of its private nature, the case does not go on the record for precedential value. And anything related to that case remains confidential. Thus, the shaming aspects of a public trial are not at play here. The virtual judge may be one of Linden Lab's Liaisons, or Linden Lab can outsource to a third party company that specializes in online dispute resolutions. For example, eBay outsources its disputes to Square Trade: it is a private company that online users can utilize to resolve conflicts. Colin Rule, eBay's Director of Online Dispute Resolution, states, "I've seen players turn to Square Trade, which costs \$20, to handle a \$10 dispute."<sup>214</sup> Indeed, this possibility is not far-fetched and likely a good resource for IDR.

[¶106] IDR does not use publicly-elected judges because the disputes are behind closed doors and this may raise a red flag if a judge is biased. Moreover, the parties may choose

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<sup>213</sup> See e.g., New York State Unified Court System, Alternative Dispute Resolution, <http://www.courts.state.ny.us/ip/adr/index.shtml> ("Alternative dispute resolution includes mediation, arbitration and other ways of resolving conflicts with the help of a specially trained neutral third party without the need for a formal trial or hearing.").

<sup>214</sup> Terdiman, *supra* note 184.

whether to have the matter mediated or arbitrated. With mediation, the virtual judge simply helps the parties reach a decision; however in arbitration, the judge acts more like the decision maker. The rest of the IDR process mirrors the ISCC.

[¶107] The benefits of the IGJ are multi-leveled. First, it remedies the long-standing concern of the Law and Borders thesis<sup>215</sup> that real world legal systems have no place in the virtual world. As the IGJ reveals, a real world legal system can be tailored for a virtual world setting. However, the virtual world stands on its own without flooding the real world legal system. Thus, real world assets and money are not implicated. Second, damages remain in the game. Avatars resolve disputes amongst themselves and as such, real world property is not implicated. In-game property is transferred and recovered based on the verdict. Third, the plaintiff has his day in court. If Linden Lab fails to properly punish the griefer and relieve the victim, then the victim may file a complaint and seek justice. Alternatively, Linden Lab does not even have to be apprised of the initial crime. The victim can simply file the complaint with the IGJ. This will wring out any emotional flare-ups or property losses that the plaintiff incurs. Fourth, the defendant, whether he wins the case or loses, realizes the implications of grieving in a virtual world. Other avatars in the community will also realize the consequences. Fifth, the legal costs in-game would likely be significantly cheaper than in the real world. Had this system been present, perhaps Eros LLC would have sought justice in-game, rather than spend \$5,000 in real-world lawyer fees against Simon for a \$525 settlement.<sup>216</sup> Lastly, Second Life will develop a common law system specific to the game world itself.

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<sup>215</sup> See Grimmelman, *supra* note 14, at § Introduction (referring to David R. Johnson and David Post, *Law and Borders: The Rise of Law in Cyberspace*, FIRST MONDAY, May 6, 1996, <http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/468/824>).

<sup>216</sup> See Reuters, *supra* note 158.

## 2. TIER 2: The RWJ: Player vs. Player

[¶108] Although the IGJ appears to tackle all the bases of dispute resolution in Second Life, an uncovered arena still warrants discussion and development. The RWJ system, or real world justice system is a dispute resolution forum of last resort. This is where the human player, himself, is held *personally* responsible to other human players for his avatar's activities that pierce the virtual veil ("PVV"). Here, a real world court system would adjudicate matters occurring within a virtual world scheme. And as Fairfield and Locke demonstrate, real world legal systems do technically allow for virtual world disputes relating to property. Indeed, with the PVV, many of the issues are streamlined.

[¶109] PVV helps delineate when and how to determine whether a human player is responsible for his avatar's conduct. Similar to "Piercing the Corporate Veil" in corporate law,<sup>217</sup> where the court removes the protection provided individual members of a corporation for criminal activity, and makes these members responsible for their own actions, here, PVV holds the player liable for actions of its avatar. The rationale is quite simple: at times players act egregiously in virtual worlds partly because they know that they are shielded from the virtual actions of their avatars. The human player, himself, is not in the wrong, but the avatar is the one wreaking the havoc. However, once the human player has conducted an egregious act under the auspices of its avatar, then he has pierced the virtual veil making himself liable for the act.

[¶110] Perhaps matters that warrant complete player banishment in the IGJ are transferred to the RWJ with Linden Lab's endorsement. Arguably, under the theory of piercing the corporate veil, the state, like Linden Lab, created the avatar entity, so the state can decide when to disregard the avatar shield. In getting to this stage, the plaintiff must shoulder the

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<sup>217</sup> See, e.g., *In re Hillsborough Holdings Corp. v. Celotex Corp.*, 166 B.R. 461, 468-69 (Bankr. M.D. Fla. 1994), *aff'd* 176 B.R. 223 (M.D. Fla. 1994); Maurice J. Dix, *Adequate Risk Capital: The Consideration for the Benefits of Separate Incorporation*, 53 NW. U. L. REV. 478 (1959) (collecting cases).

responsibility of fulfilling the test<sup>218</sup> to determine a piercing of the *virtual* veil. Assuming the jurisdiction is California, where Linden Lab is located, then a two-prong test must be fulfilled: a unity of interest and ownership between the avatar and the human player, and an inequitable result would occur if the acts were treated as those of the avatar alone.<sup>219</sup> If the totality of circumstances shows egregious conduct on the part of the perpetrator, then there is a real world basis for relief. The burden is on the plaintiff to show the defendant's egregious behavior.

[¶111] Because this would be an extreme resort for justice, an example of a potential real world action for avatar behavior may be the game player, Zhu, who sold the saber sword for real world money and affected the financial situation of Qiu.<sup>220</sup> Or had Avatar Stoklitsky run-off without a trace with nearly \$10,000,<sup>221</sup> then the victims could seek legitimate real world court resolve rather than contacting local police and the FBI.

[¶112] The most troubling issue with the RWJ is that real world courts have yet to decide the implications of in-world playing translating into real world disputes. The jurisdictional divide between virtual world and real world is still quite strong. However, some gaming experts, like Julian Dibbell, think that it might be time for real-world judicial systems to take the antics of virtual scammers seriously. "No lawyer, no cop, no anybody is going to get away with saying, 'That has no value, therefore it's not our problem,'" Dibbell says. "They're going to have to look at the context of the game and figure out what the real answer is."<sup>222</sup>

[¶113] Perhaps a real world court could hear those disputes which are so egregious and significant in damages that the virtual world setting provides no resolve. Indeed, Adams who

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<sup>218</sup> The precise factors that a court looks at in determining whether to pierce the corporate veil vary from state to state.

<sup>219</sup> See *Associated Vendors, Inc. v. Oakland Meat Co.*, 210 Cal. App. 2d 825, 837 (1962).

<sup>220</sup> *Real-Life Murder in Online Gaming Dispute*, *supra* note 111.

<sup>221</sup> See Nino, *supra* note 152.

<sup>222</sup> Caroline McCarthy, *Cons in the Virtual Gaming World*, CNET NEWS.COM, Aug. 31, 2006, [http://news.com.com/Cons+in+the+virtual+gaming+world+-+page+2/2100-1043\\_3-6111089-2.html?tag=st.num](http://news.com.com/Cons+in+the+virtual+gaming+world+-+page+2/2100-1043_3-6111089-2.html?tag=st.num).

scammed billions of dollars in ISK in Eve Online could be brought to a real world court. Even though the game, itself, did not recognize theft, the real world court would surely define the property scam as such, even if Adams did not translate the in-world money into real world money. Virtual property, like ISK, shares the characteristics of real world property as Fairfield establishes. Thus a real world court system should not be precluded from hearing cases of virtual property theft and damage.

## V. CONCLUSION

[¶114] The law exists to protect those who have suffered damages and punish those who have perpetrated in the losses. With virtual worlds becoming more like the real world in the social and economic sense, the lack of a system for relief is putting avatars in a disgruntled “playing” position. In order for a society to grow, there must be trust and harmony between community members. The duplicity, manipulation, and disorder running rampant in virtual worlds leads to a negative gaming experience. Rather than avoid the detriments of discord, game developers may find themselves in a more comforting situation if they provide aggrieved avatars a venue for justice. EULAs already provide players with a sense of what is right and wrong; but what they do not provide is a place for aggrieved avatars to have their day in court or reap back their losses from the griefer. Moreover, warnings and suspensions do not demonstrate a useful deterrent message. This is evident from the increase in crimes that are occurring throughout virtual worlds.

[¶115] With the two-tiered roadmap of the IGJ and the RWJ, a system of justice presents itself in the virtual arena. The IGJ will afford aggrieved avatars a place to seek relief—ISCC or IDR—one being a public venue like a court, and the other being a closed door dispute resolution.

Both will beacon a new era of justice in a world where coded objects are disputed over and emotions are just as strong. The IGJ will also usher in a new form of rule: *virtual* common law. And the RWJ system will give the player the opportunity to bring forth a claim against other egregiously-acting players. Although players are genuinely considered immune from avatar action, once the line between virtual world and real world has been blurred, or “pierced”, then real world court action will control. Frankly, this is not a mechanism I suggest to be used often until we understand the role of virtual property in the real world. Even though virtual property shoulders the same characteristics of real world property, it is still a fuzzy area of hesitation and doubt. Only the most significant claims should go through the real world court system. Ultimately, time will tell how the real world court plans to adjudicate such claims.

[¶116] Arguably, the system I have proposed is neither perfect nor exhaustive. It is merely a guideline of what developers can do to enhance a gamer’s experience and attract more customers. Also, this adjudication system will give more legitimacy in a virtual world that models itself like the real world. This way, real world consequences will not have to take over virtual world actions.

[¶117] Understandably, critics will scoff at the idea of a legal structure or outlet guiding a make-believe world. After all, it is only a game. It seems unreasonable to punish players for activities committed in a *fantasy-land*. But this argument no longer carries weight. A serious commitment of money and time is invested in virtual worlds. As the virtual worlds become bigger, more diverse, and more technologically advanced, avatars will need a venue to maintain themselves and provide a sense of order within the community. In time, going to court and seeking justice will be a part of a hard day’s work in the land of zeroes and ones.