Law in the Virtual World: Should the Surreal World of Online Communities be Brought Back to Earth by Real World Laws

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Comments

LAW IN THE VIRTUAL WORLD: SHOULD THE SURREAL WORLD OF ONLINE COMMUNITIES BE BROUGHT BACK TO EARTH BY REAL WORLD LAWS?¹

I. INTRODUCTION

In 2003, the world of online interaction changed forever with the advent of the online community of Second Life.² Prior to Second Life and other massive multiplayer online role-playing games ("MMORPGs"), online communications were primarily restricted to e-mail, instant messenger and chat rooms.³ Though thousands of Internet users could, among other things, engage in online sales of goods at websites such as Amazon.com, no system gave users the ability to personally interact with one another.⁴ With game designer Linden Lab's introduction of Second Life, however, users now have an Internet platform through which they can truly communicate on a face-to-face basis.⁵ The online virtual world of Sec-

1. See Richard Siklos, A Virtual World but Real Money, N.Y. TIMES, Oct. 19, 2006, § C (quoting Sibley Verbeck of Electric Sheep Company). Although potential copyright infringement issues stem from his in-world boutique, Verbeck considers Second Life to be a surreal environment, much like the Salvador Dali item he allegedly counterfeited. Id. Also, according to Linden Lab chief executive Philip Rosedale, Second Life has "taken off in a way that is kind of surreal." Id.

2. See Bettina M. Chin, Regulating Your Second Life. Defamation in Virtual Worlds, 72 BROOK. L. REV. 1303, 1310 (2007) (noting with creation of Second Life, "line separating fantasy from reality became fainter"). Second Life provides individuals with an online virtual world where they can create an avatar, a virtual character that represents them in the "in-world." See id.

3. See Siklos, supra note 1 (noting before Second Life and MMORPGs, people would be engaged in same activity online, but unable to see or speak to each other); see also Kenneth James, Real Benefits in Virtual Worlds, Bus. TIMES (Singapore), Dec. 11, 2006, available at 2006 WLNR 21377087 (interviewing Second Life co-creator Cory Ondrejka). Mr. Ondrejka emphasizes the communication and collaboration benefits that Second Life brings to the Internet and distinguishes Second Life from MMORPGs in terms of these benefits. See id.; see also Chin, supra note 2, at 1304 (citing Kenneth James of Singapore Business Times). Ms. Chin furthers the point that Second Life is a new approach to online communication, noting, "Second Life was designed to be more than an interactive 'chat room' for conversations." Id.

4. See Siklos, supra note 1 (examining differences in communication between online programs such as Amazon.com and Second Life).

5. See Chin, supra note 2, at 1303-05 (proffering how similar Second Life is to living in parallel universe). Second Life offers users the opportunity to create an avatar character and use this character to explore landscapes reminiscent of real world cities and countryside. See id. at 1303. In addition, users can meet with one
ond Life has continually expanded since its creation in 2003, offering users a multitude of activities to keep them occupied.\(^6\) For example, Second Life users can mirror almost any real world activity in the virtual world, ranging from purchasing virtual property, to creating “in-world” businesses, to setting up discussion forums.\(^7\) If users choose not to engage in any of these activities, they can simply fly around the virtual world and spectate.\(^8\)

With the rapid rise of such a new and expressive medium, however, it was only a matter of time before conflicts and issues began to surface.\(^9\) While Second Life users are required to consent to both Linden Lab’s Terms of Service and its Community Standards, whether or not these end user licensing agreements sufficiently regulate Second Life has become a major issue.\(^10\) Some commentators

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\(^6\) See Chin, supra note 2, at 1312 (noting users can “interact, shop, create communities, travel, and even retain jobs”).

\(^7\) See Second Life, Frequently Asked Questions, http://secondlife.com/whatis/faq.php (last visited Oct. 20, 2008) [hereinafter Second Life, FAQ] (highlighting multitude of options available for users when they enter Second Life). Users can hang out with friends in a garden, go out to a nightclub, go shopping, start a shopping business of their own, create a home/building or do all of these. See id. In Second Life, the decisions are left to the users, so it is up to them to find activities that suit their interests. See id.

\(^8\) See id.; see also Siklos, supra note 1 (offering more activities that users can engage in, such as flying or walking underwater).

\(^9\) See Alan Sipress, Where Real Money Meets Virtual Reality, the Jury is Still Out, WASH. POST, Dec. 26, 2006, at A01 (highlighting potential problems in copyright, property and tax law that exist in Second Life); Chin, supra note 2, at 1327-46 (describing potential defamation issues present in Second Life); see generally James Grimmelmann, Virtual Worlds as Comparative Law, 49 N.Y.L. SCH. L. REV. 147 (2005) (outlining legal issues of property, contract and criminal law present in Second Life). The potential for claims to arise under each of these types of law calls attention to this Comment’s purpose: to discuss each of these potential suits and determine the best means available to resolve these issues. See id.

argue that these agreements are the appropriate legal mechanisms for governing Second Life because they consider Second Life to be a game, and therefore, believe the game’s creators should have wide latitude in regulatory decisions. Other commentators argue, however, that with Second Life’s progression into the world of commercialism, external “real world” laws should apply.

This Comment attempts to provide an answer to the ongoing debate over which type of law should govern Second Life’s virtual world. Part II provides background information on Second Life, primarily discussing its development since inception, what constitutes a user versus a “resident” of Second Life and how Second Life continues to evolve with the recent explosion of commercialism on the platform. Part III focuses on three fields of law where potential controversies exist for Second Life users, namely property, criminal and tax law. This Section describes recent incidents among Second Life users, compares and contrasts how such incidents would be resolved if they occurred in the real world and discusses how the virtual world complicates the application of these legal ap-

11. See Jack M. Balkin, *Law and Liberty in Virtual Worlds*, 49 N.Y.L. SCH. L. REV. 63, 76 (2005) (“Courts and legislatures should give virtual communities wide latitude to design their own rules and social norms to deal with misbehavior and leave plenty of room for the creativity of the people who design games as well as the people who play them.”); F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CAL. L. REV. 1, 73 (2004) (concluding real world courts will have to recognize virtual worlds as “jurisdictions separate from our own, with their own distinctive community norms, laws and rights”). Lastowka and Hunter believe that the virtual world will continue to grow, and as it grows, users will need to seek protections for their rights. See id. Ultimately, the design companies will hear these concerns and compromises will be made in-world so as to avoid the complications that real world laws will bring to the virtual world. See id.; see also Catherine Holahan, *The Dark Side of Second Life*, BUS. WK. ONLINE, Nov. 11, 2006, available at 2006 WLNR 20202728 (noting that Linden Lab wants Second Life community to develop its own “local authorities” and laws to regulate itself, rather than allow enforcement of real world laws).

12. See Jankowich, *supra* note 10, at 219-20 (suggesting that while restrictive legislation should be avoided, virtual worlds like Second Life need to protect property rights through real world legislation). Second Life is becoming more commercialized, meaning that as more people enter Second Life and decide to go into business for themselves, and as more major companies like Adidas and Sony set up shop in Second Life, more issues will arise, making it increasingly difficult to regulate using EULAs alone. See id.; see also Chin, *supra* note 2, at 1325, 1347-49 ("[T]he opportunity to bring virtual suits into the real world must be proffered."). Chin contends that Second Life does not presently contain any sort of forum or arbitration system whereby users can fairly resolve their claims, and therefore, until that day comes, users must threaten to use, or actually use, real world litigation in order to protect their assets. See id. at 1348-49.

13. For a further discussion of the development of Second Life or any of the features it provides, see *infra* notes 19-45 and accompanying text.

14. For a further discussion of the potential areas of legal controversy stemming throughout Second Life, see *infra* notes 46-49 and accompanying text.
Part IV begins by offering countervailing arguments for precluding real world law from the virtual world. This section then highlights the alternatives to real world law, such as the program’s Terms of Service and Community Standards licensing agreements. Next, Part V analyzes the benefits and drawbacks of both approaches to regulating Second Life’s virtual community. Finally, Part VI concludes that, although differences exist between the real world and virtual world, the most practical approach to regulating Second Life is a mixture of both real world laws and end user agreements.

II. WHAT IS SECOND LIFE?

If you have ever imagined what the world would be like if you could do whatever you wanted without having to worry about what other people thought or how you would be judged, then you should open your eyes because you are in Second Life. In 2003, game designer Linden Lab unveiled its Internet platform Second Life. From its inception, Second Life has allowed individuals to create their own personal characters and control these characters’ movements in a virtual world filled with grass, trees, buildings, streets and rivers. Unlike many previous MMORPGs, Second Life has no end goal. There are no creatures for users to hunt, kill,
slay or even conquer. Rather, Second Life was created as a community platform where users could interact with one another and spend their time in any way they pleased. Users can opt to purchase property and build a house on it, or they can simply roam the virtual environment in search of interesting and exciting people to meet.

A commercial explosion has accompanied Second Life's progression, with users creating virtual businesses where they can develop and sell virtual world products. As virtual businesses in Second Life continue to grow, more users have been buying or leasing property to set up shops where they can create and sell a wide range of virtual commodities, such as clothing, jewelry, shoes and furniture. Although purchasing these goods requires the use of Second Life's virtual currency, Linden Dollars, overwhelming de-
mand for these items has driven users to exchange real world money for virtual Linden Dollars. In fact, users can now buy Linden Dollars with real world currency and directly purchase any in-world item for their avatar.

Consequently, the ability to use real currency to purchase in-world goods has increased the demand for in-world goods. As a possible by-product of the in-world entrepreneurs’ success, real world corporations have recently taken an interest in Second Life. 

28. See SL Exchange – SL Exchange Fees, http://www.slexchange.com/modules.php?name=Content&pa=showpage&pid=4 (last visited Oct. 20, 2008) (quoting current conversion rate to be 272 Linden Dollars for each U.S. Dollar); see also Siklos, supra note 1 (noting that Second Life is virtual world, but its money is convertible into U.S. dollars); Mark Wallace, Sunday Money: Earning: The Game Is Virtual. The Profit Is Real., N.Y. TIMES, May 29, 2005, § 3 (describing growth of virtual money exchanges). It was only a matter of time before the ability to create products for sale translated into people using real money to buy them. See id. In Second Life, users are presented with a multitude of choices when it comes to purchasing items. See id. The Linden Dollar has grown in popularity and avatars no longer have to work for their money, but they can buy it, using real world currency. See id. In fact, this currency exchange between real dollars and Linden Dollars has enabled users to make significant earnings in the real world. See id.


30. See Wallace, supra note 28 (offering evidence of continued increase in demand for in-world goods). Rosedale, Linden Lab’s chief executive and founder, stated, “[t]he value of the average player’s transaction, if converted to real money, is more than $1,000 a year and has been growing nearly 25 percent a month.” Id. Also, one Second Life resident admits she spends $10 to $15 a month on virtual clothing and accessories and would spend more if she could afford it. See id. She admits, “[w]ith all the things you can buy in Second Life, it’s hard not to want them, just like real-life stuff.” Id.

31. See Siklos, supra note 1 (“The sudden rush of real companies into so-called virtual worlds mirrors the evolution of the Internet itself, which moved beyond an educational and research network in the 1990’s to become a commercial proposition . . . .”). Due to the format of Second Life’s in-world platform, major companies are attracted to it because of its ability to meld some of “the most popular forms of news media: chat rooms, video games, online stores, user-generated content sites like YouTube.com and social networking sites like MySpace.com.” Id.; see also Virtual Online Worlds: Living a Second Life, supra note 22 (offering examples of several major companies that have joined virtual marketplace in Second Life, including Sun Microsystems, Wells Fargo, Starwood Hotels and Toyota). These companies have all rented property in Second Life where they advertise their real
Within the past two years, companies such as Sony BMG Music, Sun Microsystems, Nissan, Adidas/Reebok, Toyota and Starwood Hotels have all purchased properties in Second Life and created businesses where they sell both in-world and real world goods. As a result, users in Second Life now have access to almost any product they can dream of, and, if not, they can simply create it for themselves.

As of now Second Life has been differentiated from MMORPGs because it is based on the concept of a virtual community, while MMORPGs focus more on a storyline and have an end goal. What further sets Second Life apart is the way creator Linden Lab developed Second Life's property system. In general, MMORPG users do not own any property. Rather, their only property interests exist in the items they carry on themselves. Second Life varies from MMORPGs in that property interests are not world products, with some companies even opting to sell their goods in virtual form. See id.

32. See Siklos, supra note 1 (highlighting current efforts of large companies to use Second Life's virtual world as another medium to advertise their products and services). For example, a user can go the Second Life area where Nissan is headquartered, Nissan Island, and purchase either a virtual car for his avatar or a real car for himself. See id. Companies like Nissan have taken full advantage of Second Life's capabilities by creating a virtual road course where avatars can test-drive Nissan vehicles before they decide to buy one. See id. In a similar vein, Sony BMG has decided to advertise its music and artists through Second Life by offering "live" performances of BMG labeled artists in Second Life. See id. Starwood Hotels has also taken an interesting approach to using Second Life for its business, opting not to sell any virtual property, but instead to test out its new hotel in Second Life. See id. Starwood has leased property in Second Life and constructed a replica of its newest hotel, allowing users to walk through the hotel to see if they like it. See id. This virtual hotel provides two benefits for Starwood: one, publicity for the hotel chain; and two, feedback from a large scale consensus group, allowing Starwood to create a hotel that maximizes the needs/will of the people. See id.

33. See Lavallee, supra note 27 (noting ease of creating items in Second Life thanks in part to minimal costs of creating products and uploading them to Second Life platform). In the real world, experimenting with clothing design can be prohibitively costly and an insurmountable barrier to entry into the field. See id. In Second Life, however, all the necessary materials are virtual, and, once a user creates a single copy, there are no added costs to replicate and sell the item. See id. This is a great incentive for users who may have thought about going into business in the real world but lacked sufficient funding. See id.

34. See Second Life, FAQ, supra note 7 (describing that as resident of Second Life, individuals can own property and use that property to live and work).

35. See Grimmelmann, supra note 9, at 151 (describing player's property-type rights in MMORPGs as "possessory" rather than actual property ownership rights).

36. See id. (discussing user items as property). In a typical MMORPG, such as Ultima Online, a player only owns something so long as he does not set it down. See id. "As soon as it is set down on the ground, it becomes unowned and whoever picks it up next becomes the new owner. Dropping constitutes abandonment." Id. (footnote omitted). Unlike in MMORPGs, in Second Life a player owns property once he purchases it. See Chin, supra note 2, at 1312 (noting way to obtain real
determined by the physical possession of property. In Second Life, users are divided into two groups: users and "residents." Residents are separated from users because "residents actually own property in Second Life, so they can be thought of as living in Second Life, while users have no homes to return to after a long day in the virtual world."

When first creating a Second Life account, individuals are required to fill out a document with their personal information, create an avatar and agree to the terms and conditions of Second Life’s EULAs. After the initial set-up, users are offered two options: (1) purchase property on the Second Life platform; or (2) bypass purchasing property and enter Second Life for free. The benefit of becoming a resident is the ability to design and build a home on your property. Residents can build their homes in any way they desire. This creative freedom reflects the recurring theme of free expression that runs throughout Second Life, even, for example, in the way people choose to clothe their avatars. Thus, Second Life marks a significant departure from traditional MMORPGs and creates a new world of social interaction where in-

37. See Chin, supra note 2, at 1312 (noting that when user creates item, he retains complete intellectual property rights for that good); see also Second Life, FAQ, supra note 7 ("[Y]ou [the user] also own anything you create – residents retain IP rights over their in-world creations.").
38. See Second Life, FAQ, supra note 7 (noting there are two options available when joining Second Life, either free basic membership or monthly lease fee when purchasing parcel of land). A user is described as someone who chooses the free membership and does not actually invest in the Second Life community by purchasing property. See id. A resident, on the other hand, is exactly what the title implies, a purchaser of property in Second Life. See id.
39. Id.
40. See Second Life Registration: Basic Details, https://secure-web6.secondlife.com/join/ (last visited Feb. 25, 2008) (requiring user to fill out personal information); see also Second Life, Community Standards, supra note 10 (listing six standards of conduct users must follow); Second Life, TOS, supra note 10 (outlining basic requirements for becoming user of Second Life virtual community).
41. See Second Life, FAQ, supra note 7 (offering two ways for individuals to join Second Life).
42. See id. (explaining benefits of signing up as premier members and owning property). By purchasing property, a resident has an "on-going presence" in Second Life. See id. Because Second Life is not simply centered around a sole user, even when a resident leaves Second Life their property and home remain. See id.
43. See id. (stating residents can build homes, start businesses or create any other type of building they can imagine).
44. See Lavallee, supra note 27 (quoting Raz Schionning, American Apparel’s director of Web services, as he described clothes in Second Life as racy and "Matrix"-inspired).
individuals, acting through their avatars, can communicate, cohabitate and construct a new life in a virtual land.\textsuperscript{45}

III. WHERE THE REAL WORLD AND ITS LAWS BRIDGE THE GAP INTO THE VIRTUAL WORLD

While the interactive society of Second Life appears to be a virtual Eden, the exponential increase in the number of registered users and the subsequent attention this population boom has drawn from mega-corporations have caused real world problems for the virtual world.\textsuperscript{46} This is mainly the result of users’ ability to buy and own property.\textsuperscript{47} Additionally, Second Life allows its users to retain intellectual property rights for items they create.\textsuperscript{48} These

\textsuperscript{45} See James, supra note 3 (distinguishing MMORPGs like World of Warcraft from virtual communities like Second Life). In World of Warcraft (“WoW”) the game is set up with “clear objectives and goals, rules and competition, ways to win[,]” while Second Life has no objectives, rules or ways to win set out for its users. Id. As co-creator and chief technology officer of Second Life, Cory Ondrejka, explains, “Second Life, on the other hand, is all about communication and collaboration.” Id.


\textsuperscript{48} See id. (explaining requirements to purchase land in Second Life); \textit{see also} Second Life, TOS, supra note 10, § 3.2 (acknowledging that users of Second Life “retain any and all applicable copyright and other intellectual property rights with respect to any Content [they] create using the Service, to the extent [they] have such rights under applicable law”); Second Life, TOS, supra note 10, § 4.3 (notifying users that in order to enter Second Life they must comply with Digital Millennium Copyright Act (“DMCA”) regarding copyright infringement claims that develop in-world); Second Life, DMCA: Digital Millennium Copyright Act, http://secondlife.com/corporate/dmca.php (last visited Oct. 20, 2008) (notifying Second Life users that appropriate way to remedy alleged copyright infringement is through DMCA notification process).
inherent benefits have lead to conflicts arising in the areas of property rights, criminal law and taxation. 49

A. Property Issues

When discussing property in the virtual world, several different types of property must be taken into account. Foremost, there is real property, which covers land and a resident's home; next, chattels and personal property, which refer to goods that a person owns other than real property; and finally, intellectual property, which consists of copyright, patent and trademark rights. 50 Though potential issues can develop with respect to each area of property law, this section will be confined to a discussion of real property.

In Second Life, a user has two options upon first entering the virtual platform: (1) register for free; or (2) purchase or lease property – through monthly real world payments – and become a resident. 51 When a resident purchases property in Second Life, the resident buys an ownership right in a parcel of land on the Second Life platform. 52 Though Second Life is a virtual world, and as a virtual world the resident is not actually buying anything physical or tangible, the benefits and uses of property in Second Life closely mirror real property in the real world, such that this virtual property should receive the same status and recognition. 53

49. For an in-depth discussion of the potential legal claims that arise in Second Life, see infra notes 50-177 and accompanying text.

50. Compare Virtual Land Lawsuit Reveals Dark Side of Second Life, supra note 39 (describing how virtual real estate is similar to real world real property), and Virtual Land Dispute Spills over into Real World, supra note 39 (noting that plaintiff, Marc Bragg, known in virtual world as "Marc Woebegone," is seeking real world remedy of specific performance in his virtual land dispute against Linden Lab), with Holahan, supra note 11 (noting concern Second Life community is facing trying to protect its property such as goods business owners create and sell), and Second Life, TOS, supra note 10, § 3.2 (describing availability of intellectual property rights in Second Life when user creates in-world item).

51. See Second Life, ML&P, supra note 47 (offering user option of either Basic account, which is free, or Premium Second Life account, which is $9.95 per month, but offers user parcel of land to own, build upon, entertain and live on).

52. See Chin, supra note 2, at 1306 (referring to Anshe Chung as "virtual Donald Trump" or "virtual Rockefeller," who purchases land in Second Life, subdivides it and resells or rents it to others in Second Life community). The story of Anshe Chung exemplifies that virtual land in Second Life is considered by both residents and Linden Lab as real property owned by residents, and as such capable of being subdivided and sold off to other users for a profit. See id. at 1306-07.

53. See Lastowka & Hunter, supra note 11, at 42 ("[T]he intangibility problem of virtual property [is] really no problem at all."). As Lastowka and Hunter point out, "the primary theories of property are consistent with the concept of property rights in virtual assets." Id. at 13. In Second Life, virtual real property shares the same qualities and attributes as real property in the non-virtual world, namely the rights to use, to exclude and to transfer. See id. at 30. In fact, in most virtual worlds
When a resident in Second Life purchases a parcel of virtual land, it becomes more than simply a part of an Internet game to most residents. According to commentators, when users of Second Life become residents and purchase property they tend to “become personally invested in objects that they perceive as belonging to them.” The ownership of virtual property in Second Life is not merely about users taking actions for the sake of playing the game, but, much to the contrary, the property is uniquely valuable to the resident. Furthermore, unlike in many MMORPGs and video games, when a Second Life user leaves the game for any period of time, the game does not shut down, and the world does not pause until the user signs-on again. Instead, Second Life and other similar concepts of private property is the norm, making the similarities between real property in the virtual and real worlds more evident.

54. See id. at 48-49 (noting that strong connections exist between individuals and their avatars to extent that property of avatars is considered real because of effect it has on avatar/individual). When individuals create an avatar in Second Life they are doing more than creating a video game character, they are projecting themselves into the avatar, making the avatar take their place in a world they cannot physically visit. See id.

It is well documented that people feel connected to their avatar, not as a thing but as a projection of their self . . . . If, as personality theory would have it, property might be justified by reference to the effect on the self, it would seem that there is a normative basis for claiming property in virtual reality, virtual chattels, and, a fortiori, avatars.


56. See Lastowka & Hunter, supra note 11, at 36 (discussing relationship residents have with their property in Second Life); Balkin, supra note 11, at 2066 (concluding that as result of individuals investing great amounts of time and effort into building up their lives in Second Life, leaving Second Life becomes quite costly). When individuals join Second Life they are under the assumption that the property they buy from Linden Lab is theirs to keep, and accordingly they invest themselves into the avatar, which includes setting up a home for the avatar. Id.; see also Virtual Land Lawsuit Reveals Dark Side of Second Life, supra note 46 (claiming that once virtual land is sold to consumers it is no longer the property of Linden Lab).

57. See Lastowka & Hunter, supra note 11, at 6 (outlining how Second Life and other virtual worlds differ from basic single player based games). In Second Life, players are part of a community of residents who are interacting in real-time
lar virtual worlds proceed unfettered, for the world does not revolve around the user.58

After a resident in Second Life buys a parcel of property on the virtual platform, the next step is usually to build a home on the property.59 The process of creating a home is one of the numerous activities available to residents of Second Life and, in many instances, users invest a considerable amount of time and money in creating and designing their homes.60 Accordingly, commentators have concluded that it "is clear from the amount of real-world time and money invested in the virtual property, [that] individuals place a very high value on the virtual objects they create."61 Under this rationale, Second Life property owners should have the same rights as real world property owners.62

with each other. See id. What one player does effects everyone else, and, therefore, when a player is not in-world, and instead is going about their real world lives, Second Life does not stop and wait for them to return; it continues on as the real world does. See id.; see also Second Life, FAQ, supra note 7 (noting benefits of land ownership in Second Life). Second Life's creator, Linden Lab, has described the benefits of purchasing land in Second Life as giving the resident:

[An on-going presence in the world, for [their] home, [their] business, or whatever other special place [they have] created. Even when [they are] not online, [their] friends or customers can stop by to leave [them] a message or shop for [their] latest creation. Think of it as [their] home away from home!]

Id.

58. See Lastowka & Hunter, supra note 11, at 5 (analogizing non-networked computer games to mental capacity of two-year-old child and contrasting Second Life and other virtual worlds from this basic level of complexity).

59. See generally id. at 6, 9 (theorizing that, due to rich social and communicative nature of virtual worlds like Second Life, "many of those who have chosen to visit virtual worlds remain residents of them"). In Second Life the only way to become a resident is to buy property. See generally Second Life, FAQ, supra note 7 (advocating benefits of land ownership). It is through ownership of property that residents maintain an on-going presence in Second Life. See id. Of the numerous users of MMORPGs, Edward Castronova, an economics professor at California State University at Fullerton, has determined that "[m]illions of people spend a large portion of their waking lives in virtual worlds. A significant number of users even claim primary citizenship in virtual worlds." Edward Castronova, Virtual Worlds: A First-hand Account of Market and Society on the Cyberian Frontier, Dec. 2001, CESifo Working Paper Series No. 618, http://papers.ssrn.com/abstract=294828.

60. Cf Chin, supra note 2, at 1306-07 (discussing how individuals are spending considerable amounts of time and money on virtual property and in developing these properties so as to reap large returns when parcels are resold). See generally Lastowka & Hunter, supra note 11, at 6 (describing how residents of Second Life spend their time and money, for instance on designing houses for their avatars).

61. See Lastowka & Hunter, supra note 11, at 45 (proffering that as individuals invest more time and money into something it is more likely to be considered property).

62. See id. at 49 ("[T]here seems to be no reason under traditional theories of property to exclude virtual properties from legal protection . . . . [O]wners of virtual assets do, or should, possess property rights."). In Second Life, virtual real
Though residents in Second Life purchase virtual land and have a continued interest in their property, from the perspective of Second Life's designers, countervailing interests emerge. When game designer Linden Lab first created Second Life, they completely owned and operated the virtual platform. From that time the platform has been used as it was intended, as a place for social interaction and communication between users, but at all times the platform has remained under Linden Lab's control. Therefore, if Linden Lab decides to expand the platform, it is their prerogative to do so. Similarly, if the company determines that a user is violating any of the original user agreements, it may use its discretion to suspend or remove the user. Thus, conflicts arise from the com-

property shares the same qualities and attributes as real property in the non-virtual world, namely the rights to use, exclude and transfer. See id. at 30. In fact, in most virtual worlds the concept of private property is the norm, making the similarities between real property in the virtual and real worlds more evident. See id. at 32.

63. See Balkin, supra note 11, at 2053-61 (noting that, when game designers create these virtual worlds, they regard them as artistic expression; expression that should remain unaltered unless by virtual world designer's themselves). Creating virtual worlds, or even MMORPGs, it is argued, involves the same type of creative expression as writing a book or creating a film. See id. In that sense, whatever the author, director or designer decides to do to the work should be at their sole discretion. See id. Therefore, if a virtual world designer wants to shut down the platform for whatever reason, they should be able to. See id. As it has become clearly obvious, this sets up quite a problem when looking back to the previous discussion of how virtual property owners should have property rights akin to those in the real world. See id. With designers wanting one thing and players pushing for the complete opposite, controversy prevails. See id.

64. See Second Life, TOS, supra note 10, §§ 1.1, 3.1 (outlining that Second Life is service provided by Linden Lab to all users of Second Life and that Linden Lab owns and controls service). When users establish an account with Second Life, Linden Lab grants to the user a "non-exclusive, limited, fully revocable license to use the Linden Software" and nothing more. Id.

65. See id. (describing limited nature of power users of Second Life possess); see also id. § 3.3 (noting that regardless of any rights given to users of Second Life, Linden Lab retains complete ownership of users' accounts).

66. See id. § 5.3 (acknowledging that Linden Lab may delete, alter or transfer any data that is on Linden Lab's servers "AT ANY TIME FOR ANY REASON IN LINDEN LAB'S SOLE DISCRETION"). Therefore, at least according to the Terms of Service that each user agrees to when creating an account, if Linden Lab decides to rezone part of Second Life's platform it can do so without having to consult or worry about any user rights' issues. See id. (explaining that Linden Lab has final say regarding information on their servers). This does not necessarily mean that Linden Lab will proceed in this fashion of simply taking user's property; rather, because this is a business, Linden Lab will prefer to maintain a good rapport with its customers whenever possible. See id. However, section 5.3 demonstrates that although in most instances Linden Lab will not take this approach, ultimately it is the sole discretion of Linden Lab what it chooses to do, and users are legally powerless without any ownership rights.

67. See Second Life, TOS, supra note 10, § 4.1 (listing ten actions by users of Second Life that may constitute violations of Second Life's Terms of Service and which permit Linden Lab to suspend or terminate user's accounts). If a decision is
peting interests between Linden Lab and residents because Linden Lab has the right and ability to remove a resident and delete his profile – which includes all the resident’s property – while a resident, on the other hand, has a right to his property, albeit virtual property, and its preservation regardless of whether the game designer wants to remove him from the game. 68

One possible approach to solving this conundrum would be to look to real world law and see the approach it would take to solve the problem. 69 In the real world, an individual who purchases land, whether from the government or from another private party, owns the real property outright and cannot be forced to surrender it. 70 Under property law theory, if someone takes another person’s property, the only remedy available that would make the owner whole again is specific performance, in which, the owner would regain his or her property. 71 If the virtual world truly paralleled the real world, then specific performance would be a simple remedy for a property dispute in the virtual realm as well. 72 Unfortunately made to suspend or terminate a user’s account, the decision is at the sole discretion of Linden Lab. See id.

68. Compare Balkin, supra note 11, at 2058 (describing how “[g]ame designers will attempt to equate their practices in monitoring and regulating virtual worlds to artistic expression and argue that interference with their practices of monitoring and regulation of their virtual worlds is akin to censorship”), and Second Life, TOS, supra note 10, §§ 1.1, 3.1, 3.3, 4.1, 5.3 (concluding that Second Life is under control of Linden Lab and subject to its sole discretion, even when negatively affecting users), with Lastowka & Hunter, supra note 11, at 32, 45, 49 (theorizing that virtual property so closely mirrors real-world real property such that “owners of virtual assets . . . should possess property rights”), and Balkin, supra note 11, at 2045 (“If virtual assets are regarded as property, it is difficult to imagine that the law will not move to protect them.”).

69. See Chin, supra note 2, at 1306-07 (suggesting applying real world law when potential legal issues arise in Second Life, for example in tort law and criminal law); Jankowich, supra note 10, at 175 (“From early on, participants in virtual worlds have sought methods, including legal action, to assert their rights against proprietors.”); Balkin, supra note 11, at 2045 (“[B]ecause virtual worlds are fast becoming important parts of people’s lives, and because they are likely to be used for more and more purposes in the future, legal regulation of virtual worlds is inevitable.”) (footnote omitted).

70. See CAL. CONST. art. I, § 1 (describing inalienable rights of people under California jurisdiction, among them “acquiring, possessing, and protecting property”). Under Federal law, the only instance when the Government may take an individual’s land is when just compensation is paid to the landowner for his property. See U.S. CONST. amend. V (prohibiting taking of private property for public use “without just compensation”).

71. See 12 CAL. REAL EST. CODE § 34:17 (West 2008) (describing specific performance remedy available to real property owners who are seeking return of their unlawfully taken property).

72. See CAL. CIV. CODE § 1039 (West 2008) (defining property transfer as “an act of the parties, or of the law, by which the title to property is conveyed from one living person to another”). If the purchase of virtual property from Linden Lab
these two worlds differ in several significant respects, particularly in terms of where property originates.73

In a virtual world like Second Life, the virtual platform on which a resident purchases real property exists only because of the efforts of the game designer who created it.74 In the real world, however, property owners generally own their property in fee simple absolute, meaning they have complete control and dominion over their property.75 This differs from the type of property transferred in the virtual world because, even after a resident buys a parcel of virtual property, the game designer continues to maintain an interest in the property.76 In other words, because of the game designer’s continued interest in the property, as well as in the supervision of residents’ actions, a resident of the virtual world can only obtain a fee simple defeasible interest in their property.77 Linden Lab should be able to remove a resident if it decides the resident is

fell under this provision then the real world law would effectively govern property transfers in virtual worlds like Second Life. See id. (defining property transfers broadly).

73. See Second Life, FAQ, supra note 7 (answering question of what is Second Life). “Second Life is a 3D digital world imagined and created by its Residents.” Id. Linden Lab runs thousands of servers, which are used to house the virtual platform it created back in 2003. See id. (explaining aspects of Second Life and its creation). See Second Life, TOS, supra note 10, § 3.3 (discussing how Linden Lab retains ownership of Second Life accounts, which includes virtual property). But see Thom J. McEvoy, Private Property Rights: A Look at Its History and Future, Fruit Notes, Volume 66 (2001) (describing real property ownership as acquisition of “bundle of rights” over such property). The original founders of the United States wanted a change in the way property was owned to reflect individual ownership and free transferability of property. See id. The founders disliked the English property law system whereby the crown owned property and people merely worked on the land. See id. Accordingly, U.S. property law developed with private ownership in mind. See id.

74. See Chin, supra note 2, at 1303 (describing creation of Second Life virtual platform by designer, Linden Lab).

75. See Legal Match, http://www.legalmatch.com/law-library/article/fee-simple-and-fee-simple-absolute.html (last visited Feb. 25, 2008) (defining fee simple absolute and what rights ownership in this form entails). This form of real property ownership is limited by the four basic government powers of taxation, eminent domain, police power and escheat. See id. For our purposes, however, none of these limitations makes a difference, because this section is attempting to show the differences between real world and virtual world property, and therefore, if virtual property were the same as real property, it would be subject to these same four limitations. See id.

76. See Second Life, TOS, supra note 10, § 3.3 (discussing how Linden Lab retains ownership of Second Life accounts, which includes virtual property).

77. See Legal Match, supra note 75 (defining fee simple defeasible and distinguishing it from fee simple absolute). “A fee simple defeasible is a fee simple that could end with the violation of a condition.” Id. In Second Life, Linden Lab has the power to suspend or cancel a user’s account when the user violates any one of the numerous rules in section 4.1. See Second Life, TOS, supra note 10 (describing conduct by users of Second Life). Therefore, the user, at most, only retains “own-
acting in a way that differs from the designer’s plan for the virtual platform because Linden Lab created the Second Life virtual platform and, theoretically, has the right to do anything with the property that it chooses.\textsuperscript{78}

B. Criminal Law Issues

If virtual worlds like Second Life are merely video games, and users playing these games possess no items of value, then it would be rare to find any potential criminal law claims.\textsuperscript{79} Second Life, however, is arguably not a video game or even a MMORPG, and upon moving through Second Life, it is readily apparent that users own and possess a variety of different items.\textsuperscript{80} As one commentator recently concluded, “[t]he single most important development that will lead to legal regulation of virtual spaces is the accelerating real-world commodification of virtual worlds.”\textsuperscript{81} This conclusion is telling in the sense that it was reached over four years ago, even before many of what we now refer to as virtual worlds existed.\textsuperscript{82} Today, almost anything is up for sale in these virtual platforms and goods are no longer traded just for virtual currency that has no real world

\textsuperscript{78} See Second Life, FAQ, supra note 7 (answering question of, what is Second Life). “Second Life is a 3D digital world imagined and created by its Residents.” \textit{Id.} Linden Lab runs thousands of servers, which are used to house the virtual platform it created back in 2003. \textit{See id.}; see also Thom J. McEvoy, \textit{Private Property Rights: A Look at Its History and Future}, Fruit Notes, Volume 66 (2001) (noting that property ownership is ownership of bundle of rights, namely rights of use, occupancy, cultivation and to license or lease property); see generally, Legal Match, supra note 75 (describing rights of fee simple absolute). The owner of a fee simple absolute has the right of possession, the right of alienation and the right of exclusion. \textit{See id.}

\textsuperscript{79} See Grimmelmann, supra note 9, at 167 (describing that, in video games, avtaricide is not considered murder).

\textsuperscript{80} See Lastowka & Hunter, supra note 11, at 30 (commenting that “[p]roperty in today’s virtual worlds is not confined to virtual reality”). Lastowka and Hunter after researching \textit{The Sims Online}, concluded:

[\textit{E}verything [an] avatar will need costs money: not only will you have to furnish your avatar’s house with couches, beds, a toilet, and maybe a pizza oven, but all of the objects and chattels in your place are subject to wear and tear. If you want to keep attracting guests you will have to refresh the buffet, unblock the toilet, and fix the broken weight-lifting machine. All of these services have a price.}

\textit{Id.}

\textsuperscript{81} Balkin, supra note 11, at 2046.

\textsuperscript{82} Compare Balkin, supra note 11, at 2043 (noting article was published in December of 2004), \textit{with} Chin, supra note 2, at 1310 (noting that Second Life was released in 2003), \textit{and} Siklos, supra note 1 (noting that as of summer of 2006, only one or two companies had began entering Second Life).
equivalent, but for virtual currency that can be exchanged for real U.S. dollars.\textsuperscript{83}

One part of the problem that has developed in response to the virtual world commodification is theft of virtual goods.\textsuperscript{84} While entrepreneurs expend time and energy creating virtual items to sell to other avatars, other users instead choose to replicate these virtual items and sell them as their own creations.\textsuperscript{85} This potential for virtual "pirating" greatly concerns many Second Life residents who worry that the hard work and time they invested in creating in-world goods can be diminished by someone copying and selling these goods.\textsuperscript{86} Without any legal protection to ensure that only the creators of in-world goods profit from their creations, users are left helpless and hoping that this does not happen to them.\textsuperscript{87}

Further, whenever individuals come together in a community, whether in real life or in the virtual world, the potential exists for violent crimes such as assault and rape.\textsuperscript{88} Second Life has already begun to experience occurrences of these types of crimes. In one particular instance, Second Life real-estate mogul Anshe Chung was attacked by animated phalluses during a news interview.\textsuperscript{89} The phalluses harassed her avatar by posting images that depicted An-

\textsuperscript{83.} See Second Life, FAQ, \textit{supra} note 7 (documenting that Second Life has its own virtual world currency called Linden Dollars, which can be exchanged at LindeX currency exchange); \textit{see also} There.com, What is There?, http://www.there.com/pressWsj_010803.html (last visited Feb. 28, 2008) (describing There's virtual currency Therebucks); Second Life, LindeX Market Data, http://secondlife.com/whatis/economy-market.php (last visited Feb. 28, 2008) (recording current currency exchange rate to be 266 Linden Dollars for each U.S. Dollar).

\textsuperscript{84.} See Holahan, \textit{supra} note 11 (reporting concerns over programs and users that are illegally copying user-created goods).

\textsuperscript{85.} See Siklos, \textit{supra} note 1 (reporting on companies that sell knockoff copies of many virtual goods other users create).

\textsuperscript{86.} See Posting of Steve O'Hear to The Social Web, http://blogs.zdnet.com/social/?p=31 (Dec. 1, 2006 1:01 PM) (noting Second Life citizens have to watch out for things such as copybot virus that are pirating their hard earned creations); Lavallee, \textit{supra} note 27 (talking about concerns among product creators that their goods are being stolen by other people and sold without any consideration for original designer).

\textsuperscript{87.} See Holahan, \textit{supra} note 11 (expressing user concerns about copybot program attacking Second Life users and copying their goods without permission). After attacks by programs like the copybot, users are left concerned that there is no law that is protecting them from these thefts. \textit{See id. But see} DMCA: Digital Millennium Copyright Act, http://secondlife.com/corporate/dmca.php (last visited Sept. 25, 2008) (offering copyright violation protection if users follow notification procedure).

\textsuperscript{88.} See Terdiman, \textit{supra} note 46 (highlighting case of physical attack on avatar in virtual world of Second Life).

\textsuperscript{89.} See \textit{id.} (describing incident involving virtual attack on Second Life avatar).
she's real life owner holding a giant phallus.\textsuperscript{90} Such incidents raise the question of what is being done – or if anything can be done – to protect users from attack.

In the real world, statutory laws deal with criminal actions and address both theft and assault.\textsuperscript{91} Applicable laws would prevent an individual from continually stealing another individual's possessions in the real world.\textsuperscript{92} For instance, according to section 484 of the California Penal Code, "[e]very person who shall feloniously steal, take, carry, lead, or drive away the personal property of another . . . is guilty of theft."\textsuperscript{93} Therefore, if the theft and pirating in Second Life occurred in the real world, under California law it would be punishable and the owner of the stolen goods would be protected.\textsuperscript{94}

According to California Penal Code Section 240, "[a]n assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."\textsuperscript{95} In Anshe Chung's case, her attackers physically assaulted her avatar with dozens of phalluses.\textsuperscript{96} If such an attack occurred in the real world, it would be a strong case for assault.\textsuperscript{97}

It is a reasonable conclusion that these alleged virtual wrongs would be illegal if committed in the real world, but difficulties arise when attempting to apply real world law to the virtual world.\textsuperscript{98} For instance, California Penal Code Section 484, which deals with theft, functions as designed because, in the real world, it can be readily ascertained to whom property rightfully belongs.\textsuperscript{99} Therefore, a person in possession of property without the owner's consent is guilty of theft.\textsuperscript{100} In contrast, the virtual world concept of owner-
ship is not as clearly delineated. Generally, users buy goods and services from one another with Linden Dollars, and these transactions are not recorded or documented to the extent that sufficient ownership records can be determined. When Linden Dollars are exchanged for real world currency, a record exists with the currency exchange company, but this information does not resolve the question of who actually owns property.

Rather, in the virtual world, ownership of goods is determined primarily through the simple method of possessory interests. An avatar is considered the owner of a good if it possesses that good, whether it is displayed in his virtual shop or maintained in his inventory. This type of property ownership system is extremely ineffective for determining if property has, in fact, been stolen. Interestingly, ownership rights are more clearly defined when transactions involve Linden Lab and the exchange of real world currency, such as in the sale or lease of property to a resident. In these exchanges, residents and users have proof of ownership, making real world law easier to apply. Overall, however, establishing ownership in virtual worlds such as Second Life is difficult, making the application of real world laws to combat theft even more so.

With only some minor modifications, the real world assault laws may be more effective at barring, or at least subsequently punishing, in-world attacks than real world theft laws are at preventing in-world theft. As previously defined, “[a]n assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Due to the relationship formed between a user and their avatar, in which the avatar acts as a “virtual

101. See Second Life, TOS, supra note 10 (stating throughout conditions that Linden Lab, not users, owns virtual world goods, with exception to copyrights).


103. See Grimmelmann, supra note 9, at 152-53 (describing difficulties of classifying property rights in virtual worlds beyond classification of ownership belonging to possessor of good).

104. See id.

105. See id.

106. See Second Life, Economic Statistics, supra note 103 (offering several charts and graphs showing exactly how much real world currency was exchanged for Linden Dollars in any given day, week or month).


108. Id.

representation" of the user, one can argue that if the avatar is injured, then the owner is injured as well. If this claim is accepted as true, real world assault law can effectively regulate the virtual world either by modifying the code to include injury on the avatar or by interpreting the current code’s definition of injury on a person as including injury on his or her avatar. Moreover, the government could investigate an attack on a user in the virtual world just as it would in the real world, by questioning witnesses, searching for evidence of the crime and, ultimately, arresting the assaulting avatar’s owner.

One major obstacle to effectively punishing violent crimes in virtual societies, though, is the level of seriousness being paid to "crimes" in Second Life. Some observers proffer that Second Life and other virtual worlds are merely games played for enjoyment, and therefore, the interplay between users cannot and should not be taken any more seriously than a gaming relationship. On the other hand, there is a growing consensus that Second Life and other virtual worlds, such as There and The Sims Online, are new mediums for human interaction, and are not games at all. The latter group advances that avatars are in-world representations of the individuals who join Second Life, and because Second Life’s purpose is primarily communication, not entertainment, in-world attacks should be treated with the same seriousness as in the real world. This is by no means a settled issue, and it demonstrates that although some real world laws technically can be applied to virtual worlds like Second Life, the underlying debate over whether or not Second Life is truly a game, bar or

110. See id. at 1325-26 (noting that avatars and their reputations are very important to real world users); see also Balkin, supra note 11, at 70 (finding that users developing their avatars create connections between user and avatar).

111. See Chin, supra note 2, at 1316-17 ("[C]ourts must accept the burden of considering virtual tort claims brought by Second Life residents and protect these residents who have integrated their online livelihood into their actual lives.").


113. See Grimmelmann, supra note 9, at 167-68 (describing seriousness of virtual crimes when virtual worlds are part of games).

114. See id. (stating that some believe gaming relationships are not serious).

115. See James, supra note 3 (classifying Second Life not as MMORPG, but instead as unique new world for communication and interaction).

116. See Chin, supra note 2, at 1326 ("[T]he law must still be able to protect those who view their Second Life experiences with high regard and who depend on their virtual existence for purposes outside of leisure").
at least deter, regulation of in-world crime by real world laws for the present time.\textsuperscript{117}

C. Tax Law Issues

Second Life and other virtual worlds differ from typical MMORPGs because they are community-based worlds where users interact and engage in commerce with one another.\textsuperscript{118} The MMORPG is a multiplayer game, with emphasis on the label \textit{game}, primarily because players are engaged in trying to reach an end goal; for example, players either attempt to slay this dragon, to raid that cave or to save the princess.\textsuperscript{119} Second Life, however, differs because there are no end goals and no dragons to slay.\textsuperscript{120} Instead, residents live, communicate and trade goods and services, closely mirroring real world human activities.\textsuperscript{121} As a result of the communal, transaction-based nature of Second Life, tax issues have arisen.\textsuperscript{122}

In Second Life, avatars are constantly exchanging goods and services, with payment typically in the form of Linden Dollars.\textsuperscript{123} If a user wants a new shirt for their avatar, they can go to one of the thousands of shops on the platform and buy it.\textsuperscript{124} If a user wants a new vehicle for their avatar to drive to nightclubs, this type of good is also available for purchase.\textsuperscript{125} In short, nearly anything that a

\textsuperscript{117} For a further discussion of the problems associated with applying real world law to the virtual worlds, see \textit{supra} notes 79-117 and accompanying text.
\textsuperscript{118} \textit{See} James, \textit{supra} note 3 (noting communicative aspect of Second Life that differentiates it from MMORPGs).
\textsuperscript{119} \textit{See id.} (noting that MMORPGs have "clear objectives and goals, rules and competition, ways to win").
\textsuperscript{120} \textit{See} Chin, \textit{supra} note 2, at 1309 (discussing that Second Life does not have clear objective like MMORPGs).
\textsuperscript{121} \textit{See id.} at 1310-12 (noting that residents "interact, shop, create communities, travel and even retain jobs"). With the creation of Second Life, "the line separating fantasy from reality became fainter . . . ." \textit{Id.} at 1310.
\textsuperscript{122} \textit{See} Press Release, Congress of the U.S., Joint Econ. Comm., \#109-98, \textit{Virtual Economies Need Clarification, Not More Taxes} (Oct. 17, 2006) (concluding trade of virtual goods has lead to considerations of taxing Second Life); James Harkin, \textit{Get a (Second) Life}, FT.COM, Nov. 17, 2006, \textit{available at} http://www.ft.com/cms/s/0/cf9b81c2-753a-11db-aa1000779e2340.html?nclick_check=1 (noting U.S. Congressional Committee was looking at ways to levy taxes on virtual world incomes); Siklos, \textit{supra} note 1 (reporting investigations were underway regarding whether virtual income and assets should be taxed).
\textsuperscript{123} \textit{See} Chin, \textit{supra} note 2, at 1304-05 (describing Second life's economy where users trade digital currency, Linden Dollars, for variety of goods and services).
\textsuperscript{124} \textit{See} Lavallee, \textit{supra} note 27 (acknowledging virtual fashion revolution occurring in Second Life).
\textsuperscript{125} \textit{See} Siklos, \textit{supra} note 1 (reporting on corporate world development in Second Life); Jana & McConnon, \textit{supra} note 46 (comparing real-world brands that
user can hope to find in the real world is available for his avatar in the virtual world. This limitless availability of goods for sale has existed since the launch of Second Life, though it has only grown since the corporate commodification of the Second Life platform. Because of the potential and actual profits being earned, the taxing of Second Life has become an issue. If everyone is having their cake in Second Life, the government surely wants a portion to eat too.

In the real world, gains derived from the sale or exchange of goods constitute part of an individual’s gross income, and this income is generally subject to tax. When an individual trades a piece of their property for another’s property, there is gain to the extent that the value of the property received is greater than the

are setting up locations in Second Life). Car manufacturers like General Motors, Toyota, Nissan and Audi have all purchased land in Second Life as a means of advertising their products. See Jana & McConnon, supra note 46. Nissan, for example, is “featuring a gigantic vending machine dispensing cars people can ‘drive’ around.” Id.

126. See Jana & McConnon, supra note 46 (listing different types of real world companies that have entered Second Life). As of late 2006, companies in the fields of advertising, cars, entertainment, computers, clothing, hotels, media, public relations and the telecom industry have entered Second Life. See id.

127. See Siklos, supra note 1 (“Second Life online service is fast becoming a three-dimensional test bed for corporate marketers.”). For proof, one only needs to look at the dozens of companies “dipp[ing] their toes in the synthetic water.” See id.

128. See Chin, supra note 2, at 1348 (noting that virtual economies have grown at extraordinary rates such that Congress is now considering taxing virtual world income); Harkin, supra note 123 (reporting that US Congressional Committee was looking into possibility of taxing Second Life). As the U.S. Congressional Committee was considering the tax implications in the states, the Australian tax office issued a warning to virtual game players, such as Second Life users, that “if their virtual fortunes could be converted into real money they needed to declare it in their tax returns.” Id.


130. See Treas. Reg. § 1.1001-1(a) (2006) (determining that “the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained”); I.R.C. § 61(a) (2006) (“[G]ross income means all income from whatever source derived, including . . . (2) Gross income derived from business.”).
value of the property given.\textsuperscript{131} Both individuals and companies in the real world deal with taxation everyday and pay tax on their gross income.\textsuperscript{132} While the tax code is likely one of the most complex and confusing documents in existence, it basically boils down to the simple maxim that only two things in life are definite: death and taxes.\textsuperscript{133}

Thus, it is simple enough to conclude that exchanges of goods and/or services in the real world are generally taxable events, but taxation does not translate well into the virtual world for numerous reasons: first, the difficulty in determining whether a realization event has occurred; second, questions of property ownership; third, jurisdiction; and fourth, disagreement over whether Second Life is actually a game.\textsuperscript{134}

1. \textit{Lack of a Realization Event}

In order for taxation to occur, it must first be determined if any taxable income exists.\textsuperscript{135} According to Treasury Regulation § 1.1001(a), "the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained."\textsuperscript{136} Therefore, in order for Second Life users to realize gain, their in-world transactions must involve an exchange of either property for cash or property for other property that is a "legally distinct entitlement."\textsuperscript{137} One obvious problem in applying this rule to transactions of virtual goods is that virtual goods are

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\item \textsuperscript{131} See I.R.C. § 1001(a) ("The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain . . . ").
\item \textsuperscript{132} See id. § 61(a)(1)-(2) (stating that income taxable as gross income comes from numerous sources both business and personal).
\item \textsuperscript{133} See Letter from Benjamin Franklin to Jean-Baptiste Leroy (1789), \textit{in The Works of Benjamin Franklin}, 1817 ("In this world nothing can be said to be certain, except death and taxes.").
\item \textsuperscript{134} For a further discussion of the problems virtual worlds pose for taxation, see \textit{supra} notes 132-135 and \textit{infra} notes 136-78 and accompanying text.
\item \textsuperscript{135} See I.R.C. § 61 (2006) (stating that gross income includes income from any source).
\item \textsuperscript{136} Treas. Reg. § 1.1001-1(a) (2006).
\item \textsuperscript{137} Cottage Sav. Ass’n v. Comm’r, 499 U.S. 554, 566 (1991) (holding that as long as one good is traded for another good that classifies as legally distinct entitlement then transaction is taxable); see also Treas. Reg. § 1.1001-1(a) ("[G]ain or loss realized . . . from the exchange of property for other property \textit{differing materially either in kind or in extent}, is treated as income or as loss sustained.") (emphasis added).
\end{itemize}
traded for virtual currency, not real world "cash."\textsuperscript{138} Though currency exchanges have been created to convert Linden Dollars to real world currency, no banking institutions presently recognize the Linden Dollar as legitimate currency.\textsuperscript{139} Until the exchange of Linden Dollars for real world tender occurs at a currency exchange, it may be prudent to withhold classifying virtual world transactions as realization events.\textsuperscript{140}

If virtual transactions between avatars do not constitute property for "cash" transactions, the next approach in determining if a realization event has occurred is examining if the transactions are "property for other property differing materially either in kind or in extent."\textsuperscript{141} According to the Supreme Court's holding in \textit{Cottage Savings Ass'n v. Commissioner of Internal Revenue}, a transaction is a taxable realization event so long as goods are traded for legally distinct entitlements.\textsuperscript{142} For example, if an individual exchanges one book for another of similar length and size, a trade for a legally distinct entitlement has not occurred, and therefore, the exchange is not taxable.\textsuperscript{143}

Looking then to Second Life's in-world transactions, users trade one virtual item for another, albeit that one virtual item is virtual currency.\textsuperscript{144} These items are legally distinct when one examines their analogous in-world uses; yet inversely, there are those that argue that because both of these items are "virtual," neither good is

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\item\textsuperscript{138} Treas. Reg. § 1.1001-1(a) (stating that one way to create income is from conversion of property into cash). \textit{But see Cottage Sav. Ass'n}, 499 U.S. at 556 (holding that as long as one good is traded for another legally distinct good then transaction is taxable).
\item\textsuperscript{139} \textit{See} Adam Reuters, \textit{Danish Bank moves to offer trading in Second Life}, Mar. 2, 2007, http://secondlife.reuters.com/stories/2007/03/02/danish-bank-moves-to-offer-trading-in-second-life/ (commenting that Denmark's Saxo Bank is considering offering exchange between Linden Dollar and real currency, but no such market exists as of yet).
\item\textsuperscript{140} \textit{See} Harkin, \textit{supra} note 123 (offering evidence that, at least according to Australian tax officials, when virtual income is converted to real money, taxation can occur); \textit{see also} Press Release, Congress of the U.S., Joint Econ. Comm., #109-98, \textit{Virtual Economies Need Clarification, Not More Taxes} (Oct. 17, 2006) (noting that if income is generated in U.S. dollars, it is more likely that income will be taxed then if transaction takes place entirely in virtual economy).
\item\textsuperscript{141} Treas. Reg. § 1.1001-1(a) (2006) (stating second way gain realized is treated as income is through property for property exchange).
\item\textsuperscript{142} \textit{See} 499 U.S. 554, 566 (1991) (holding transaction as taxable realization when goods are traded for legally distinct entitlements).
\item\textsuperscript{143} \textit{See generally} id. (identifying what constitutes "legally distinct entitlements").
\item\textsuperscript{144} \textit{See generally} Chin, \textit{supra} note 2, at 1504-05 (offering examples of objects exchanged in Second Life for digital currency).
\end{itemize}
\end{quote}
distinguishable.\textsuperscript{145} Regardless of one's opinion on the issue, such a debate illustrates that uncertainty and problems exist in taxing virtual worlds.\textsuperscript{146}

2. \textit{Lack of Ownership}

Second Life's Terms of Service Agreement, which a subscriber must accept to set up an account, notifies users that Second Life is a service provided by designer and owner Linden Lab.\textsuperscript{147} Everything on the platform, including users' avatars and the goods they possess, belong to Linden Lab and not the users or residents.\textsuperscript{148} If Linden Lab determines, at its sole discretion, to modify, delete or transfer a user's "property," it may do so without fear of infringing upon user's rights or the requirement of compensation.\textsuperscript{149} For Second Life users, this means that they actually do not own anything created in Second Life.\textsuperscript{150} At most, users retain copyright and other intellectual property rights in the goods they create in-world.\textsuperscript{151} Even these rights, however, do not provide users complete ownership of their in-world creations because, according to section 3.3 of Second Life's Terms of Service Agreement:

\begin{quote}
Even though [users] may retain certain copyright or other intellectual property rights with respect to Content [they] create while using the Service, [users] do not own the account [they] use to access the Service, nor do [they]
\end{quote}

\textsuperscript{145} See generally Second Life, TOS, \textit{supra} note 10, § 3.3 (notifying users that Linden Lab owns all property in Second Life because all property in Second Life is data stored on Linden Lab servers). All of an avatar's items, which includes its virtual currency and its car, house and clothing are in reality just account data. \textit{See id. But see Balkin, \textit{supra} note 11, at 76-77 (recognizing that "[m]any virtual worlds have in-game currency and increasingly this currency is effectively convertible into real-world currency whether through eBay or other sources"). In the end, however you choose to exchange it, Linden dollars through LindeX, or a virtual bed through eBay, each can be exchanged for cash in the real world. \textit{See id. See Second Life, TOS, \textit{supra} note 10, § 1.5 (describing virtual exchange service for Linden Dollars called LindeX).}

\textsuperscript{146} For a further discussion of how identifying a realization event creates problems for taxing the virtual world, see \textit{supra} notes 136-146 and accompanying text.

\textsuperscript{147} See Second Life, TOS, \textit{supra} note 10, § 1.1 (notifying user that Second Life is service provided by Linden Lab).

\textsuperscript{148} See \textit{id.} § 3.3 (notifying users that while accounts are individualized they do not belong to users, but to Linden Lab).

\textsuperscript{149} See \textit{id.} § 5.3 (informing users that at Linden Lab's sole discretion data may be modified, deleted or transferred).

\textsuperscript{150} See \textit{id.} § 3.3 (notifying users that everything concerning their virtual lives is data on Linden Lab servers and thus belongs to Linden Lab).

\textsuperscript{151} See \textit{id.} § 3.2 (stating that users can own copyrights to goods they create in-world).
own any data Linden Lab stores on Linden Lab servers (including without limitation any data representing or embodying any or all of [their] Content).\textsuperscript{152}

Therefore, as described in section 3.1 of Second Life’s Terms of Service Agreement, users possess “a non-exclusive, limited, fully revocable license to use the Linden Software and the rest of the Service.”\textsuperscript{153} Because users only enjoy a license to use their avatars’ possessions in Second Life, taxing these virtual transactions would amount to taxing loaned goods.\textsuperscript{154} Additionally, for purposes of determining gain or loss to be treated as gross income, the law is only aimed at taxing the sale or disposition of property and not at taxing users who merely license property.\textsuperscript{155} Therefore, taxation of virtual transactions poses problems very different from real world transactions.\textsuperscript{156}

3. Jurisdiction

As the Joint Economic Committee conceded, “virtual economies represent an area where technology has outpaced the law.”\textsuperscript{157} If the Internal Revenue Service (“IRS”) plans to tax virtual world transactions, one of the major obstacles will be determining the appropriate jurisdiction in which to tax them.\textsuperscript{158} Users and residents of Second Life live not only throughout the United States, but the entire world.\textsuperscript{159} Linden Lab’s Vice-President, David Fleck, commented, “[the tax issue] has to play out, and [Linden Lab] [has] to make sure [it] understands the implications. It will have to be examined against regional tax laws, country by country, even state by state.”

152. Id. § 3.3.
153. Id. § 3.1.
154. See id. § 3.1 (clarifying that users of Second Life do not own their avatars’ properties, but instead are licensed to use them).
156. For an analysis of why taxation of virtual transactions poses problems, see supra notes 136-56 and accompanying text.
158. See Mabel Newcomer, Coordination of Federal, State, and Local Tax Systems, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Vol. 183, 39 (1936) (noting difficulty of running same tax system at different levels of government). The easiest solution to the difficulties of running the same tax system at state and federal levels is to create separate tax systems for the different levels of government. See id.
159. See Second Life, FAQ, supra note 7 (calculating that “[r]esidents come to the world from over 100 countries with concentrations in North America and the UK”).
state."\textsuperscript{160} Linden Lab is a California-based company, and, according to section 7.1 of its Terms of Service, California law governs any disputes between users and Linden Lab.\textsuperscript{161} However, recently the United States District Court for the Eastern District of Pennsylvania distinguished these jurisdictional requirements in \textit{Bragg v. Linden Research, Inc.} and assumed jurisdiction over Linden Lab and its CEO irrespective of the company’s governing law requirement.\textsuperscript{162} Therefore, the rules contained in Second Life’s Terms of Service are unlikely to provide any assistance in choosing which proper tax laws apply.\textsuperscript{163} While there are some jurisdictions that would choose to tax Second Life, virtual worlds present difficulty in applying any sort of uniform tax system to all of its users.\textsuperscript{164}

4. \textit{In the End, Second Life is a Virtual World, not the Real World}

The underlying purpose behind Second Life is to create a virtual community where people can interact and communicate with one another.\textsuperscript{165} Users are given the opportunity to recreate themselves in virtual avatar forms and communicate with people worldwide in a new and unique forum.\textsuperscript{166} Linden Lab created Second Life as an interactive medium distinct and separate from the real world.\textsuperscript{167} This new utopian concept is what has attracted many of

\begin{itemize}
\item \textsuperscript{160}\textsuperscript{.} Foley, \textit{supra} note 130, at 50.
\item \textsuperscript{161}. \textit{See generally} Second Life, TOS, \textit{supra} note 10, §§7.2-7.3 (identifying California as exclusive jurisdiction for claims against Linden Lab, and providing optional arbitration agreement).
\item \textsuperscript{162}. \textit{See} 487 F. Supp. 2d 593, 595 (E.D. Pa. 2007) (holding that Federal Eastern District of Pennsylvania was proper jurisdiction for case, and that arbitration provision of Second Life’s TOS is unconscionable).
\item \textsuperscript{163}. \textit{See generally id.} at 593 (holding Second Life’s TOS arbitration provision unconscionable and directly going against provision identifying California as exclusive jurisdiction for claims to be brought in).
\item \textsuperscript{164}. \textit{See} Harkin, \textit{supra} note 123 (identifying that Australian Tax Office would subject virtual gains in worlds like Second Life to taxation). \textit{But see} Press Release, Congress of the U.S., Joint Econ. Comm., #109-98, \textit{Virtual Economies Need Clarification, Not More Taxes} (Oct. 17, 2006) ("[I]f the transaction takes place entirely within a virtual economy, then it seems there is no taxable event.").
\item \textsuperscript{165}. \textit{See} Jana & McConnon, \textit{supra} note 46 (interviewing Linden Lab CEO, Philip Rosedale). Rosedale does not consider Second Life to be a MMORPG, but instead "he sees it as a new social-networking platform, like MySpace." \textit{See id.}
\item \textsuperscript{166}. \textit{See} Chin, \textit{supra} note 2, at 1312 (discussing how Second Life allows users to interact without real world confines of time and place). According to Chin, "the purpose of Second Life is to provide an interactive meeting ground and marketplace where people are not limited by the confines of real-world physics; users here can accomplish more than what is physically possible in the real world." \textit{Id.}
\item \textsuperscript{167}. \textit{See} Siklos, \textit{supra} note 1 (explaining Second Life’s creative goal).
\end{itemize}
Second Life’s original residents and users. With the ever-increasing real world commodification of Second Life and the potential for taxation of the virtual platform, many of the benefits that originally made Second Life revolutionary are being threatened. Although some commentators argue Second Life is a virtual community and not a game, there are others who purport that, in the end, Second Life is no less a game than World of Warcraft or EverQuest.

While it is true that there are users of Second Life who work in the virtual world to profit in the real world, a majority of Second Life users’ virtual world actions are merely for entertainment purposes. Users may spend money on purchasing Linden Dollars or creating virtual clothing for their avatar, but these actions, in and of themselves, do not make the virtual world a real world. Similar investments of both time and energy are made in video games constantly because these expenditures make gaming more enjoyable. For instance, a player in EverQuest might not enjoy playing if he or she did not spend time and money on the game to develop and “level up” his or her character. Therefore, in deciding whether or not to tax virtual world transactions, the overarching issue is whether the virtual world is simply a game.

In some areas, the distinction between the status of virtual worlds may be unimportant if user actions in the virtual world are examined only by their interaction with the real world. For instance, in tax law, if the government were to tax only currency exchange transactions and not in-world user transactions, defining

168. See id. (describing anger of virtual community originalists resulting from introduction of real world businesses into Second Life). The introduction of big business has intruded on the digital utopia of Second Life. See id.

169. See id.

170. See Wallace, supra note 28 (reporting that while some view Second Life as business, “not everyone cares to spend time toiling in pursuit of game money”).

171. See Virtual Online Worlds, supra note 22 (noting that some users of Second Life “are there just for fun”). “[Users] fly over islands, meander through castles and gawk at dragons.” Id.; see also Wallace, supra note 28 (reporting that while some see Second Life as business, others are not in Second Life to make real life money).

172. Cf. Lastowka & Hunter, supra note 11, at 9-10 (explaining that classifying programs as games does not take away their societal value). EverQuest is considered a MMORPG, but in this game characters use virtual currency to purchase goods and trade with each other. See id.

173. See id. at 26 (describing how players of MMORPGs work hard and invest time and energy into game in order to level up their characters).

174. See id. (detailing players investing time and energy into game).

175. See id. at 7-9 (analyzing relationship between real world and virtual world).
virtual worlds becomes unnecessary because, either way, an individual would be realizing a gain or loss from the exchange of property for cash.\footnote{See Treas. Reg. § 1.1001-1(a) (2006) (stating that one way to recognize gain is “from the conversion of property into cash”).} In this situation, a gain or loss is includable as income and subject to taxation.\footnote{See id. (applying treasury regulations to determine that Second Life transactions of Linden Dollars for U.S. dollars constitute taxable gross income).}

IV. REGULATING SECOND LIFE THROUGH END USER LICENSING AGREEMENTS

Dissimilarities between the real world and the virtual world must be reconciled when applying the real world property, criminal and taxation laws to the virtual world of Second Life.\footnote{For a further discussion of the difficulties separating the real world from the virtual world, see supra notes 46-179 and accompanying text.} Wherever real world law is attempting to permeate the boundary between the worlds, the problem of defining Second Life arises.\footnote{See Virtual Online Worlds, supra note 22 (noting that for some users, Second Life is played just for fun). But see James, supra note 3 (interviewing co-creator of Second Life, Cory Ondrejka, who distinguished Second Life from games because of its communicative purposes).} Whether Second Life is a revolutionary form of social community interaction raises doubts as to whether virtual worlds should be governed by real world law.\footnote{See Lastowka & Hunter, supra note 11, at 40 (discussing difficulties in applying real world property laws to virtual properties). Virtual properties are essentially entries of computer code on a game server and are subject to loss from a computer server memory wipe or shutdown. See id.} This Section will examine an alternative to using real world laws to regulate the virtual world, namely the application of end user licensing agreements (“EULAs”) and contract law.\footnote{See Second Life, Community Standards, supra note 10 (listing standards of conduct that Second Life users must follow); Second Life, TOS, supra note 10 (outlining terms and conditions users must abide by to use Second Life’s service).}

When an individual joins the Second Life community, he or she must read and accept several licensing agreements.\footnote{See Second Life, TOS, supra note 10 (outlining in both its preamble and § 4.1 that users must accept terms and conditions set forth in TOS and Community Standards agreement); Second Life, Community Standards, supra note 10 (setting out “Big Six” standards of behavior in Second Life).} The first mandatory document is the Community Standards document, which lists six types of behavior Linden Lab prohibits.\footnote{See Second Life, Community Standards, supra note 10 (listing types of behavior).} Violation of any of the six prohibitions results in a user’s suspension or expul-
sion from the platform.\textsuperscript{184} The second mandatory document is the Second Life Terms of Service agreement ("TOS"), which lists all the terms and conditions upon which Linden Lab offers use of their services to individuals.\textsuperscript{185} If an individual does not agree with all of the terms and conditions, then the agreement prompts the individual to decline acceptance, resulting in the user being prohibited from accessing Second Life.\textsuperscript{186} Therefore, simply by becoming a user or resident, the participants have consented to and agreed to abide by the terms and conditions set forth in these agreements.\textsuperscript{187}

Violation of either the TOS or the Community Standards confers upon Linden Lab the right to suspend or terminate a user’s account.\textsuperscript{188} The power to remove users from the platform is Linden Lab’s primary method of enforcing its rules and regulations.\textsuperscript{189} Although removal may not appear to be a forceful influence for users and residents to abide by the EULA-imposed laws, both suspension and expulsion are substantial threats given users’ significant investments in Second Life.\textsuperscript{190}

\begin{enumerate}
\item See id. (noting that if users violate any of “Big Six”: intolerance, harassment, assault, disclosure, indecency and disturbing the peace, Second Life will suspend, or after repeated violations, expel user’s account).
\item See Second Life, TOS, supra note 10 (outlining terms and conditions for Second Life users).
\item See id. (“This offer is conditioned on [user’s] agreement to all of the terms and conditions contained in the Terms of Service . . . . By using Second Life, [user] agree[s] to these Terms of Service. If [user] do[es] not so agree, [user] should decline this agreement, in which case [user] [is] prohibited from accessing or using Second Life.”).
\item See id. (“By using Second Life, [user] agree[s] to these Terms of Service.”).
\item See id. §§ 2.6, 3.2, 4.1, 5.3 (informing user that for any violation of TOS remedies available to Second Life are either suspension or termination of user’s account(s)); Second Life, Community Standards, supra note 10 (informing users that violation of any of “Big Six” standards will result in penalty of suspension or termination of user’s account). The Community Standards are enforced by § 4.1 of the TOS because in § 4.1 users agree to abide by the rules of conduct set below as well as those contained in the Community Standards agreement. See id.
\item See Second Life, TOS, supra note 10 (listing no other available means of enforcement besides suspension and expulsion of accounts as per §§ 2.6, 3.2, 4.1 and 5.3); see also Balkin, supra note 11, at 76 (illustrating that other users can try to punish bad behavior in virtual worlds by shunning violators, while game creators punish by eliminating users from platform).
\item See Balkin, supra note 11, at 77-78 (describing how players “invest considerable time and effort in the game world and in their identities . . . make[ing] exit more difficult over time”); cf. Chin, supra note 2, at 1325-26 (discussing substantial investment users make in Second Life, which in turn makes leaving virtual world difficult). Suspension and expulsion have the same effect because a user feels that the only way to show their discontent is to leave the virtual world. See id. “Although simply leaving behind the ‘second life’ or creating a new character (or account) may technically resolve these issues, these options may not satisfy the
\end{enumerate}
The use of EULAs to regulate virtual communities like Second Life preserves the surreal and virtual nature of the communities as they were originally created. For instance, if a property dispute arises between a resident and Linden Lab, the TOS provides for optional arbitration by a neutral arbiter. Similarly, if a theft of goods occurs, Linden Lab's TOS offers its users two forms of resolution. Under section 5.1, Linden Lab has the right, but not the obligation, to resolve disputes between Second Life users. If Second Life opts to make a determination regarding a dispute, the resolution "will be final with respect to the virtual world." If the issue occurs due to a copyright infringement claim, Second Life adheres to the processes outlined in the Federal Digital Millennium Copyright Act ("DMCA") according to section 4.3 of the TOS.

V. Weighing the Pros and Cons of End User Licensing Agreements Against Real World Laws

The application of real world laws to the virtual society of Second Life poses a multitude of difficulties, but leaving Second Life and other virtual worlds subject to the rule of EULAs may be simi-

users who have spent much time and energy developing their avatars, their in-world reputations and their online businesses." Id. at 1326.

191. See Chin, supra note 2, at 1326 (arguing that importing real world laws into virtual realm is ineffective, and TOS agreements are better suited to govern virtual worlds); Julian Dibbell, OWNED! Intellectual Property in the Age of eBayers, Gold Farmers, and Other Enemies of the Virtual State or, How I Learned to Stop Worrying and Love the End-User License Agreement, http://www.juliandibbell.com/texts/owned.html (last visited Feb. 28, 2008) (concluding that EULAs are more efficient at handling virtual world issues than real world laws). But see Jankowich, supra note 10, at 187-90 (citing Professor Balkin, who suggests that virtual world creators invited real world commerce and must deal with real world laws that follow). For a further discussion of the negative implications of EULAs, see infra notes 198-214 and accompanying text in Part V.

192. See Second Life, TOS, supra note 10, § 7.3 (offering optional arbitration for users to resolve their disputes with Linden Lab).

193. See id. §§ 4.3, 5.1 (discussing user rights under TOS). Section 4.3 informs users that if they have copyright infringement claims, they should follow the notification process of the Digital Millennium Copyright Act and Second Life will abide by the rules of that Act. See id. § 4.3. Section 5.1 notes that while Linden Lab does not have to step in and resolve user to user disputes, Linden Lab has the discretionary power to do so. See id. §§ 5.1, 3.3, 4.1. If Linden Lab decides to step in, its decision will be final with respect to the virtual world. See id. § 4.1

194. See id. § 5.1 (discussing § 5.1 of TOS).

195. See id. (outlining procedure in § 5.1 of TOS). Note that Second Life is not obligated to mediate or judge such disputes. See id. § 4.1.

196. See id. § 4.3 (suggesting that users follow DMCA if they have copyright infringement claims because Second Life abides by rules of DMCA).
larly unwise.\textsuperscript{197} While EULAs establish a comprehensive set of rules and regulations that users and residents must follow, these rules were developed entirely by platform designers and without the input of the users.\textsuperscript{198}

When drafting the Constitution of the United States, all the parties affected had the opportunity to express their views and shape the document’s content.\textsuperscript{199} Such a similarly democratic approach was not taken when creating Second Life’s TOS.\textsuperscript{200} Rather, the terms and conditions in the Second Life TOS were unilaterally constructed to benefit Linden Lab in every potential controversy.\textsuperscript{201} Given the EULA’s one-sidedness, users will often be forced to seek outside, real world assistance in contract law to resolve controversies in their favor.\textsuperscript{202} In a recent case between Linden Lab and a Second Life resident, the United States District Court for the Eastern District of Pennsylvania held Second Life’s TOS arbitration pro-

\textsuperscript{197} For a further discussion of the cons associated with leaving EULAs alone to rule Second Life, see infra notes 201-214 and accompanying text. See Jankowich, \textit{supra} note 10, at 178 (“EULAs and TOSs provide little consideration of participants’ needs, and ad hoc rulemaking by proprietors outside of these agreements will likely be unsatisfyingly arbitrary.”); Chin, \textit{supra} note 2, at 1316 (“[M]ere termination of an account may not be a viable solution when victims of these cybercrimes have suffered an actual loss, whether pecuniary or not.”).

\textsuperscript{198} See Andrew Jankowich, \textit{Article, EULAW: The Complex Web of Corporate Rule-Making in Virtual Worlds}, 8 TUL. J. TECH. & INTELL. PROP. 1, 7-8 (2006) [hereinafter Jankowich, \textit{EULAW}] (describing EULAs as “click-wrap” licenses that users are forced to agree to upon entering Second Life).

\textsuperscript{199} See Henry J. Sage, \textit{Creation of the United States Constitution}, http://www.sagehistory.net/constitution/constitutionalconv.htm (last visited Feb. 28, 2008) (asserting that Constitution was not simply law once it was created at Constitutional Convention, but only became law after ratification by at least nine of thirteen original states).

\textsuperscript{200} See Jankowich, \textit{EULAW, supra} note 199, at 7 (noting that “[p]roprietors construct rules with little or no regard for the negotiating powers of prospective entrants”).

\textsuperscript{201} See Second Life, TOS, \textit{supra} note 10, § 5.1 (stating that in conflicts between users, Linden Lab has sole discretion to decide if it wants to resolve disputes); see \textit{id.} §§ 3.3, 5.3 (informing users that Linden Lab retains ownership of account and data, and that account is subject to deletion at anytime, regardless of intellectual property rights user holds). Intellectual Property rights do not give users ownership of their copyrighted goods on Second Life. See \textit{id.} The goods still belong to Linden Lab, which can at any time, \textit{at its sole discretion}, delete, modify or transfer the goods. See \textit{id.} See Second Life, TOS, \textit{supra} note 10, §§ 7.1, 7.2, 7.3 (informing users that California, where Linden Lab is located, has exclusive jurisdiction for claims). Other sections like section 5.4, limit Linden Lab’s liability to $50. See \textit{id.} Further, arbitration is set up according to California law, so as to capitalize on Linden Lab’s experience at arbitrating claims while many users are severely disadvantaged in trying a case for the first time. See \textit{Bragg v. Linden Research, Inc.}, 487 F. Supp. 2d 599, 611-12 (E.D. Pa. 2007) (holding arbitration provision both procedurally and substantively unconscionable).

\textsuperscript{202} See Chin, \textit{supra} note 2, at 1316 (finding EULAs both ineffective and one-sided).
vision both procedurally and substantively unconscionable. The one-sidedness of the provision tilted all controversies in Linden Lab’s favor and placed Second Life users at a distinct disadvantage. Overall, the provisions of the TOS effectively stack the deck in Linden Lab’s favor when disputes arise and, given the amount users have at stake in Second Life, the TOS is unfair.

Not only are the terms and conditions of Second Life’s TOS agreement unfair to users, but they are also ineffective at resolving in-world disputes. If a crime is committed against a user by another user, the only available redress is either suspension or termination of the violator’s account by Linden Lab. Linden Lab is not responsible for redressing the injuries of the victim and no term or condition within the TOS allows the victim to seek monetary damages from the violator.

With no means to appeal a Linden Lab decision within the TOS, a dissatisfied user who wants to dispute only has one method to voice their discontent: leaving the game platform. This option is troublesome for two reasons. First, Second Life presently contains over 12.5 million residents and any single user deciding to

203. See Bragg, 487 F. Supp. 2d at 593 (holding Second Life’s TOS arbitration provision both procedurally and substantively unconscionable).

204. See Chin, supra note 2, at 1316 (noting users have invested too much for unfair EULAs to govern them).

205. See Bragg, 487 F. Supp. 2d at 595-97 (discussing how virtual world property dispute has moved out of virtual world into real world); Terdiman, supra note 46 (reporting on potential virtual assault case and how user has sought outside, real world counsel to handle issue).

206. See Jankowich, supra note 10, at 178-79 (discussing lack of effective means of redress); Chin, supra note 2, at 1318 (discussing that platform owners can either suspend or terminate user’s account); Second Life, TOS, supra note 10, §§ 7.1, 7.2, 7.3 (noting users can seek outside sources, but they are limited). The United States District Court for Eastern Pennsylvania in Bragg held that the Second Life arbitration provision is inherently unfair to users. See Bragg, 487 F. Supp. 2d at 593 (noting unconscionability of arbitration provision); see also Balkin, supra note 11, at 66 (“Although players make the initial choice of which game to play, over time they invest considerable time and energy in the game world and in their in-world identities. Investment in game spaces and the desire to maintain social connections within the game space may make exit difficult, and it may be unfair to insist that exist is a player’s only legal remedy.”).

207. See Second Life, TOS, supra note 10, §§ 4.1, 5.1 (stating in section 4.1 that Linden Lab has power to suspend or terminate account if user violates either TOS or Community Standards, but this is only if Linden Lab decides to rule on dispute as per section 5.1).

208. See id. §§ 1.2, 5.2 (noting that disputes arising from contract issues may not be subject to Linden Lab regulation). Linden Lab does not regulate interaction between users, and therefore, is not party to contractual relations between users. See id.

209. See Chin, supra note 2, at 1325-26 (concluding that users can leave Second Life as means to resolve in-world issues).
voice their discontent by leaving Second Life will not significantly deter Linden Lab such that it must alter its rules to retain consumers. Second, the amount of time, money and energy invested in Second Life by users makes it impracticable for them to depart the game and abandon their investment. Linden Lab’s retention of all in-world goods produced by users leaves Second Life users and residents at the mercy of the unilateral and ineffective set of terms and conditions in Second Life’s TOS. Therefore, users seeking to receive adequate protection may need real world laws to supplement the EULAs’ shortcomings.

VI. CONCLUSION

Second Life is a truly revolutionary advancement in human interaction and communication. As Second Life continues to grow, however, the number of controversies is likely to increase. Disputes between Linden Lab and users, as well as disputes between users, are likely to persist unless an adequate means of regulation is established. Ultimately, the best form of virtual governance may consist of a mix of real world law and virtual world contracts, such that the initial step in resolving disputes will be covered by the EULA, and where the EULA provides an inadequate remedy, real world law will intervene. Whether Second Life is considered “real” or purely “virtual” is debatable but regardless of what Second Life set out to be, it has become a new world for millions of users. Because of the commitment people have made to this virtual world


211. See Chin, supra note 2, at 1326 (concluding many users have spent too much time and energy in developing themselves in Second Life to simply quit if their rights are violated).

212. See generally Second Life, TOS, supra note 10 (outlining terms and conditions for users of Second Life service).

213. For a further discussion of why real world laws may be necessary to ensure Second Life user’s rights, see supra notes 198-213 and accompanying text.

214. See James, supra note 3 (reporting on surreal new virtual world of Second Life).

215. See Sipress, supra note 9 (citing Christopher Frenze, Executive Director of Joint Economic Committee of Congress). Frenze believes that virtual world disputes are an area where there will be explosive growth in the following decades. See id.

216. For a further discussion of potential disputes arising in Second Life, see supra notes 46-197 and accompanying text.

217. For a further discussion of the positives and negatives of both incorporating real world law into the virtual world and the use of EULAs to regulate virtual worlds, see supra notes 46-216 and accompanying text.
and to their virtual lives, some level of real world law is necessary to ensure that users' rights are protected.218

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218. See Chin, supra note 2, at 1308 (concluding that real world law is necessary to some extent to regulate virtual worlds); Balkin, supra note 11, at 76-79 (concluding that more is at stake due to commodification of virtual worlds and this will lead to regulation by real world laws).

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