

Can Virtual Property Gain Legal Protection?

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In the fall of 2005, an online video game player who spent £13,700 to purchase an island that exists only in a computer game reported that he recouped his investment. The virtual treasure island he bought existed within the online role-playing game "Project Entropia." He made money by selling land to build virtual homes as well as taxing other game players to hunt or mine on the island.

The introduction of "massive multiplayer online role-playing games" (MMORPGs) has revolutionized the online video game industry. In 2003 in South Korea, for example, it was estimated that one in four teenagers was "hooked on multiplayer games" and that during that same year, the online game "Lineage" "was more popular than television" among its residents. According to one report, the worldwide market for online games will reach \$9.8 billion in 2009, representing a 410% increase over 2003 revenue of \$1.9 billion. This article will discuss some of the novel legal issues that are raised by this unique species of property, and how those issues are beginning to be dealt with by major gaming companies, game players and legal systems.

* Definition of Virtual Property *

Virtual property can be defined as an asset collected within an MMORPG, such as money, weaponry, land or other goods that have "value" inside the particular game's virtual world and that is used, traded or sold within the virtual world to increase the status and power of the gamer's avatar. An online "avatar" is a human-like character with a unique, game-related appearance and attributes that moves through the virtual world and can be saved and used over a period of time. An avatar is essential to the game because it is through him that the player exists in the virtual world and is able to accumulate virtual property.

The nature of virtual property and the manner in which it is acquired vary with the type of online game being played. For example, in the real world simulation game "There," characters purchase homes, cars and other everyday items with the use of "Therebucks," the game's currency, while in the fantasy-based virtual world "Ultima Online," power and status are achieved by slaying monsters, which either drop valuable tools or relinquish experience points to the player's avatar.

* Regulating Virtual Property *

Video games are typically protected via intangible intellectual property rights (e.g. copyrights in the visual components and trademarks in the game characters of video games). The law deems the owners of certain types of intellectual property to hold exclusive ownership rights for only a limited period of time, including the right to sell, license or transfer their property. But in some situations owners are required to allow public use at the conclusion of the term (for example, a patent holder's right to stop somebody from making or using similar goods expires at the end of the patent term). As subscriptions to many virtual worlds are time-limited and contingent upon payment, the case may be made that virtual property rights should be given to players for similar restricted periods, though for shorter periods than traditional intellectual property. In addition, the contention is that the player cannot claim property interests in the entire world, but might legitimately claim interests in each small entity of the virtual world where his labor composes the greatest part of the value of that entity.

The proponents for extending legal rights to virtual property maintain that playing virtual

games involves at least as much effort and real world money as real world work, and that the real world markets for virtual property shows that these goods possess value and deserve protection under the law. There was an estimated \$682,000 in sales of virtual property gold in October and November of 2005 on eBay for one popular game, "World of Warcraft."

The opponents of this view cite concerns over possible liabilities for economic losses suffered by players when a gaming company chooses to discontinue the game or possible adverse impact on corporate profits of game makers created by demands from players for restoration of their virtual property or compensation for permanent losses, including for virtual theft of virtual property by hackers.

According to the formalist view, the display of a picture (e.g., a magical sword) without the underlying software-based attributes has no real value worthy of protection and ownership of virtual property should be limited to rights arising from the underlying computer code or data that produces the desired output which is seen as an object on the video screen when the game is played.

To date, there are no U.S. regulatory rules or statutory laws that directly or explicitly govern virtual property. Instead, a common method to address legal issues that may arise in online gaming is through the use of computer code. For example, the maker may unilaterally control what takes place in the game (e.g., changing the virtual landscape, enhancing or limiting the powers of the players). From a contractual point of view, the maker's End User License Agreement (EULA) and/or Terms of Service (TOS) augment the maker's ability to regulate the game, defining the respective rights and responsibilities of the parties, including consequences for failure to follow game regulations.

However, contractual terms differ from one game maker to another with respect to the rights that players may have to the virtual property that they create. For example, in 2003, Linden Lab allowed subscribers to retain full intellectual property protection in content that they create. Conversely, other game makers, such as Blizzard Entertainment, retain ownership in their games and virtual property. In December 2005, Marvel Entertainment Inc. settled a lawsuit with NCSoft Corp. on the issue of whether players, using a content creation engine in the game, could create avatars that resembled famous Marvel comic characters such as Spider-Man. Although the terms of the settlement were undisclosed, NCSoft said that the parties' settlement does not reduce the players' ability to express their creativity in making and playing original and exciting characters.

* Alternative/Additional Regulations *

Some legal scholars and commentators have suggested that virtual world norms should be handled in the virtual world, free of real world interference, and be treated as "jurisdictions separate from our own with their own distinctive community norms, laws and rights." Other commentators suggest a different approach, contending that current legal rules (e.g., TOS and EULAs) may not be enforceable in all cases if valuable property interests are at issue. For example, if a game maker unilaterally terminates the game, those players that may have accumulated real world wealth in their virtual property might be left without a remedy under TOS or EULA provisions.

As an example, in 2002, BlackSnow Interactive sued Mythic Entertainment, claiming that the actions of Mythic Entertainment in shutting down several BlackSnow auctions constituted an interference with "prospective economic advantage" and unfair business practice. Although the case was ultimately dismissed before trial, it is possible that virtual property claims will

resurface in the near future.

* An Open Source Alternative? *

Open source software is software whose source code is made available by its owner to the public under a “public license,” so that the source code can be read, modified and redistributed by users, subject to certain conditions.

The application of open source to a virtual world would remove control of the online game from the hands of a corporate game maker by allowing the evolution of the game to be accomplished through the contributions of individuals. In such a scenario, the players would be obligated to sign public license agreements, thereby removing any proprietary interest that they may have in the game or its virtual property. Some content that by creating a world where liked-minded players with no proprietary interest in the game or its property participate, many of the legal issues surrounding virtual property would essentially be eliminated.

Currently, open source virtual games, such as “Open Source Metaverse Project” (OSMP) and “Croquet Project” are in their early stages of development.

* International Legal Developments Involving Virtual Theft *

Generally speaking, virtual theft involves the hacking or subverting of the online game system by another, causing a player to lose any or all of his virtual assets. Virtual mugging, a form of virtual theft, usually occurs through the use of software bots, which assault other characters in an online game and steal their assets.

In *Li Hongchen v. Beijing Artic Ice Technology Development Co.*, a Chinese court ruled that the defendant was required to restore the plaintiff’s virtual property to him after it had been stolen by a third party through hacking of the plaintiff’s account. The case is noteworthy because although the court used principles of contract law in reaching its decision, its reasons for doing so were to “protect a distinct property right—the right of the owner to control the property as against the world, not merely as against the party who committed a wrongful action (here, the third party).”

Virtual theft is no longer confined to isolated or sporadic incidents. In South Korea, an astounding 22,000 claims of virtual property theft were reported to police in 2004. In another matter, a Chinese exchange student in Japan was arrested on suspicion of using software bots to commit a virtual mugging in the game “Lineage” and selling the stolen items for real money on an auction Web site.

Legislatures in South Korea and Taiwan have enacted laws that make infringement upon virtual property a crime. The South Korean law instructs that online virtual property holds value independent of the game’s maker and that there is no fundamental difference between virtual property and money deposited in the bank. Alternatively, Taiwan decided that virtual property qualifies as electromagnetic records and should be considered movable property in cases of fraud and theft carrying a maximum sentence of up to three years imprisonment.

In December 2003, a proposal was submitted by a group of lawyers to the Law Committee of the National People’s Congress, seeking a law to protect virtual property as an essential condition for the development of the online video game industry. To date, no legislation has been passed.

* Some Potential Jurisdictional and Choice of Law Issues *

Since game players from across the globe simultaneously engage in virtual worlds, should there be a theft within this virtual world involving players from different countries, the legal systems of multiple nations (e.g., at a minimum the home country of the victim and the thief) will be involved with jurisdictional as well as conflict of law issues. In such a situation, a court might have to decide if any prior agreement as to jurisdiction or governing law for virtual world disputes (e.g., those made through a EULA or TOS) is valid, or in the absence of any such agreement, which country's law would apply.

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