

Virtual Property in Massively Multiplayer Online Games

Who is killing or suing someone over what?

Global Gaming Market

\$27.5 billion gaming market in 2005

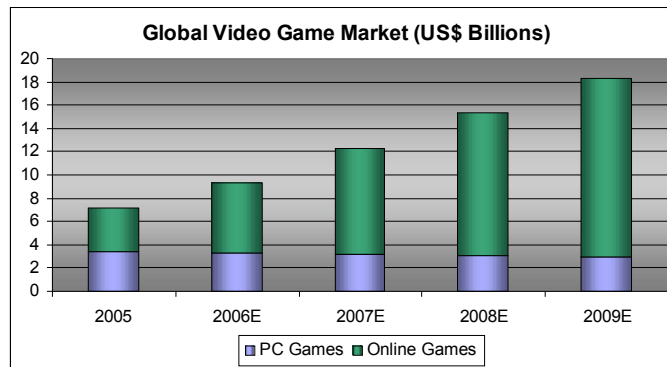
- The video gaming includes Consoles (handhelds included), PC games, online games, and wireless games.
- 2009 estimates at \$54.6 billion, growing at a 16.5% CAGR

Worldwide Video Game Market (US\$ Millions)						2005-09
Region	2005	2006E	2007E	2008E	2009E	CAGR
United States	\$ 8,438	\$ 10,158	\$ 12,762	\$ 14,080	\$ 15,067	
Change	2.9%	20.4%	25.6%	10.3%	7.0%	12.9%
EMEA	\$ 6,759	\$ 8,656	\$ 11,161	\$ 13,026	\$ 14,312	
Change	13.0%	28.1%	28.9%	16.7%	9.9%	19.1%
Asia/Pacific	\$ 11,108	\$ 14,053	\$ 17,974	\$ 20,657	\$ 23,087	
Change	10.1%	26.5%	27.9%	14.9%	11.8%	18.0%
Latin America	\$ 539	\$ 606	\$ 724	\$ 778	\$ 832	
Change	1.5%	12.4%	19.5%	7.5%	6.9%	9.4%
Canada	\$ 685	\$ 876	\$ 1,102	\$ 1,221	\$ 1,307	
Change	12.1%	27.9%	25.8%	10.8%	7.0%	16.4%
Total	\$ 27,529	\$ 34,349	\$ 43,723	\$ 49,762	\$ 54,605	
Change	8.4%	24.8%	27.3%	13.8%	9.7%	16.5%

Source: PricewaterhouseCoopers LLP, Wilkofsky Gruen Associates

PC and Online Gaming (includes MMO)

- 2005 revenues at \$7.2 billion
- 2009 estimates at \$18.3 billion, growing at a 20.5% CAGR



Sources: PricewaterhouseCoopers LLP, Wilkofsky Gruen Associates

PC Gaming/Online Market (US)

Figures in millions	2004	2005	2006E	2007E	2008E	2009E	2010E
US PC GAMING FORECAST							
PC Gamers	113.7	117.8	121.6	125.1	128.1	131.1	133.8
As a % of US Population	38.7%	39.8%	40.7%	41.5%	42.2%	42.8%	43.3%
Online PC Gamers	85.3	93.7	101.4	106.8	111.3	114.7	117.3
As a % of PC Gamers	74.9%	79.5%	83.4%	85.4%	86.9%	87.5%	87.7%
As a % of US Population	29.0%	31.6%	33.9%	35.5%	36.6%	37.4%	38.0%

Figures in millions	2004	2005	2006E	2007E	2008E	2009E	2010E
US PC GAMING FORECAST							
PC Gaming Revenues							
Gaming PCs	\$512	\$589	\$608	\$625	\$641	\$655	\$669
Packaged Software Sales	\$1,075	\$1,089	\$1,098	\$1,129	\$1,157	\$1,184	\$1,208
MMOG Subscriptions	\$252	\$354	\$462	\$563	\$645	\$726	\$805

Source: Jupiter Research

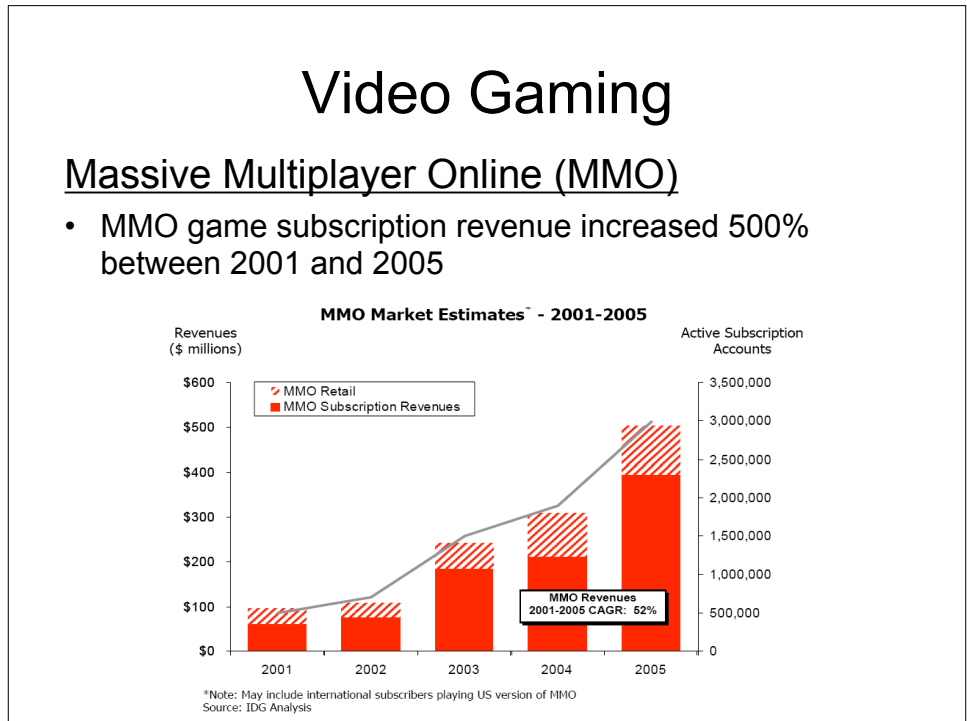
4 in 10 Americans are PC Gamers

1 in 3 Americans are Online PC Gamers

Video Gaming

Massive Multiplayer Online (MMO)

- MMO game subscription revenue increased 500% between 2001 and 2005



The MMO market



MMO

- *World of Warcraft* (Blizzard Entertainment) topped all other titles in subscription revenue for 2005

Top MMOGs by Subscription Revenues (as of Nov 2005)		
Game Title	Est. US Subscribers	Est. Annual Sub Revs
World of Warcraft	1,000,000	\$168,000,000
Final Fantasy XI	250,000	\$39,000,000
EverQuest II	250,000	\$43,000,000
EverQuest	200,000	\$35,000,000
Star Wars Galaxies	160,000	\$29,000,000
City of Heroes	110,000	\$19,000,000
Dark Age of Camelot	100,000	\$16,000,000
Lineage	67,500	\$11,000,000
Guild Wars	450,000	-
All Others	400,000	\$35,000,000
TOTAL	2,885,000	\$395,000,000

Source: IDG Analysis

- With the success of online worlds there has been a virtual gold rush of publishers and online entrepreneurs looking for new and interesting ways to cash in on this new frontier. Among the most innovative and noteworthy developments in the MMO space are:

The creation of new worlds
including:

- *Arden – the World of Shakespeare* to be created by Edward Castronova.
- MTV's *Virtual Laguna Beach* which will be a virtual world based upon and mirroring the channel's television show "Laguna Beach; The Real Orange County."
- Major League Baseball's Curt Schilling's MMO which is in development.

The introduction of real world, non gaming
elements in virtual universes:

- Reuters opened up a virtual news bureau in *SecondLife*.
- Harvard law professor teaching a virtual law class from inside *SecondLife*.
- Aloft Hotels' opens a virtual reality hotel in *SecondLife*.
- *Entropia Universe's* ATM card system that connects directly with real-world Versatel machines internationally, for easy access to the conversion between virtual and physical currency.

The Entrepreneurs

- A player who bought a Virtual Asteroid inside *Entropia Universe* for \$100,000 in late 2005, reports his virtual resort, grossed \$100,000 in the first eight months of operation.
- Anshe Chung has become the first online personality to achieve a net worth exceeding US\$1,000,000 from profits entirely earned inside a virtual world.

Real Crimes

- Murder
- With the proliferation of MMOs, there have also been incidents of real world crime associated with the games. Among the most famous was the 2005 murder of one player who stole a virtual saber from another player.[\[1\]](#)
- The underlying dispute involved the ownership of a "dragon saber" in the Chinese MMO, *The Legend of Mir III*. Qiu Chengwei lent the saber to his friend Zhu Caoyuan. Zhu then sold the saber to another player for 7,200 yuan, or about \$1,000. Qiu became incensed and reported the loss to police in February 2005, but they said the virtual saber wasn't a real thing protected by law. Qiu then demanded the money Zhu had earned from the sale. When Zhu didn't immediately pay Qiu, Qiu attacked and killed Zhu in his home.
- The court found Qiu guilty of stabbing Zhu to death and sentenced him to death. But the court suspended the death sentence for two years and good behavior might ultimately reduce the sentence from death to 15 years.

Real Crimes

– Identity Theft

- MMOs, along with the rest of society, are seeing a rise in identity theft. The criminals send key logging Trojans to the computers of unsuspecting users. Then, once installed, the Trojans forward the player's account information to the identity thief. The thief then logs in as the player and steals all of the player's virtual property. While the authorities in China might not think the theft of virtual property as a crime, the theft of the player's account information is criminal identity theft in every country.

Cheating

- **Publishers routinely ban cheaters from the games and try to restore the balance in the game play caused by the cheaters by eliminating currency introduced into the virtual economies by the cheats[1]. However, the penalties for players using cheats could be much worse than simply being banned. Earlier this year, a Korean court sentenced two distributors of the LinMate bot to 24 months in jail (suspended) and levied a fine of 10 million won (about \$10,560 USD) against them.[2]**
- "EA Cancels *Ultima Online* Accounts, Confiscates 15 Trillion Gold" (terminating 180 user accounts) (July 7, 2006) at "<http://www.gamespot.com/news/6153678.html>". See also, "59,000 WoW Accounts banned" (and 22 million gold pieces eliminated) (July 27, 2007) at "http://www.eurogamer.net/article.php?article_id=66331".
- "Court Victory Wins NCSOFT a Lot of Foes" (May 9, 2006) at "<http://times.hankooki.com/lpage/biz/200605/kt2006050917505311880.htm>"

Virtual Crimes

- Virtual Crimes
- A lot of what happens in MMOs would be considered to be criminal in the real world. Players are expected and encouraged to battle, kill and loot the belongings of other players. As the games are conceived, that mayhem is all in good fun. The problem occurs when real world economic value is associated with the characters and their virtual property. At that point does the virtual theft turn into a real world crime?
- Battery
- A Japanese man was arrested in August of 2005 for carrying out a virtual mugging spree by using bots to beat up and rob characters in *Lineage II*[1]. After the bots beat up the other characters, they would fleece them of their property and sell the ill gotten booty for real money. It is legal in *Lineage II* to kill other players and take their property. What is illegal within the confines of the game, is to use bots to do that. It is unclear from the report whether he was arrested for the muggings or for cheating using the bots.
- In the United States, it is unlikely that such virtual assault within the rules of a game would ever be deemed analogous to a real world assault. *But see, Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10th Cir.1979) "subjecting another to unreasonable risk of harm, the essence of negligence, is inherent in the game of football." "It is highly questionable whether a professional football player consents or submits to injuries caused by conduct not within the rules." Could the fact that the use of bots were outside the rules of the game turn the "legal" virtual assault into a real mugging?
- But this is just one instance of what is becoming bigger and bigger business. Counterfeiting of in-game currencies, extortion attempts by virtual "mafias", and the introduction of "fake" character accessories which are then sold at auction[2] is becoming more commonplace, so much so that organized crime is even starting to cash in on the value of the MMOs[3].
- [1] "Computer characters mugged in virtual crime spree" (August 18, 2005) at "<http://www.newscientist.com/article.ns?id=dn7865>"
- [2] "The virtual crimewave" (September 10, 2005) at "<http://www.timesonline.co.uk/article/0,,22369-1772807,00.html>".
- [3] "Microsoft: Mobsters targeting MMOGs" (August 15, 2006) at "<http://www.gamespot.com/pc/rpg/worldofwarcraft/news.html?sid=6155784>"

When is a Crime Not a Crime?

- The citizens of *EveOnline* were recently the victims of a virtual fraud scheme that would have sent the perpetrator away from a long time if it happened in the real world. Cally was the proprietor of the EIB, a virtual bank in *EveOnline*. The EIB was supposed to function like a real bank, turning its assets into investment capital and using the returns to pay interest to investors. Instead, it was a scam. Cally ran off with all of the money and was never prosecuted. Instead, he left his victims a video[1] taunting those whose fortunes were lost.
[2]
- [1] The video can be seen at "<http://dl.qj.net/index.php?pg=12&fid=9542&catid=476>".
- [2] "Cons in the virtual gaming world" (August 31, 2006) at "http://news.com.com/Cons+in+the+virtual+gaming+world/2100-1043_3-6111089.html?tag=alert"

Intentional Infliction of Emotional Distress

- While an in-game assault of one character by another would not constitute a battery under the law, a more interesting question arises over whether an action in game could constitute an intentional infliction of emotional distress. In one recent incident, which the culprits captured on video^[1], a funeral was held in game for a player who had recently died in real life. Her fellow guild members decided to hold a memorial service for her in WoW with one of her friend's playing her character. A rival guild, having heard about the ceremony, decided to infiltrate the solemn event and massacre all in attendance, which they did. Of course, since the ceremony occurred in WoW, all of the characters could be brought back to life after a short period of time. However, the question remains whether such conduct is so outrageous to rise to the level of an intentional infliction of emotional distress.
- Under California law, the elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by defendant's outrageous conduct. *Sabow v. United States*, 93 F.3d 1445, 1454 (9th Cir.1996).
- While the culprits in the funeral massacre had the intention of causing emotional distress as can be evidenced by the comments they attached to the video of the incident, it would be hard to imagine that the suffering that they caused was severe or extreme enough to rise to the level of a tort. The massacre occurred in a game where players are encouraged to battle against and kill each other. Also, once killed, the avatars can be resurrected after a short time with no real negative consequences from being killed. The part of this incident that makes it somewhat disturbing is the fact that it was a memorial service for a person that had recently died. However, a Court would probably not find that an in game funeral had the solemnity of a real world funeral.
- ^[1] The video can be viewed at "<http://www.youtube.com/watch?v=IHJVolaC8pw>"

What is virtual property?

- User accounts and characters
- Power leveling
- Objects
- Currency

Who Owns Virtual Property?

- Publishers have traditionally taken the position that they own the game, including all of the game pieces and property in the game. However, with the recognition that virtual property has value and can be traded for real money, people have started to assert that maybe the players should be able to own their own virtual property.
- Unfortunately, as with any new frontier where there inevitably emerge groups of individuals looking to take advantage of the opportunities presented by these new worlds, a new black market has emerged in the trade of virtual property. The secondary, out of game, market for these items almost rivals the market for the games themselves with some estimating that it currently stands in the hundreds of millions per year already with the potential to reach as high as \$7 billion worldwide by 2009^[1]. While many publishers prohibit the trade in virtual property through the End User License Agreement (EULA) and Terms of Use (or Terms of Service) (TOU/TOS) that each player agrees to before playing the game, some games like *SecondLife* and *Entropia Universe* allow and encourage the secondary market.

[1] See IGE's About Us webpage at <http://ige.com/about>.

Contract Provisions

- Video game publishers license the right to use the software through the use of the EULA, which governs use of the software resident on the game CD, and the TOU/TOS, which govern the use of the online component of the game. Among the terms of the EULA and TOU/TOS are (1) the end user's acknowledgement that all title, ownership rights and intellectual property rights in and to the game (including without limitation any user accounts, titles, computer code, themes, objects, characters, character names, stories, dialogue, catch phrases, locations, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, any related documentation, "applets" incorporated into the game, transcripts of the chat rooms, character profile information, recordings of games played on the game) are owned by the publisher or its licensors and (2) the end user's acknowledgement that accounts and "in game" items are not transferable.^[1]
- The validity of these agreements was recently upheld in the case of *Davidson & Associates, Inc. v. Internet Gateway, Inc.*, 334 F.Supp.2d 1164 (E.D.Mo.2004). In that case, the District Court granted the publisher's motion for summary judgment on several counts of the complaint. In so doing, the court found that private parties can agree to limit the protections afforded in the copyright law to reverse engineering through the EULA and TOU. "California courts have enforced end user license agreements, which are valid under California law. See *Adobe Sys. Inc. v. One Stop Micro, Inc.*, 84 F.Supp.2d 1086, 1089-93 (N.D.Cal.2000) (end user license agreement valid under California law); *Hotmail Corp. v. VansMoney Pie, Inc.*, No. C-98-20064, 1998 WL 389389 at *6 (N.D.Cal.1998) (applying California law, plaintiff likely to prevail on breach of contract claim regarding clickwrap agreement). Cf. *Softman Prod. Co. v. Adobe Sys. Inc.*, 171 F.Supp.2d 1075, 1087-88 (C.D.Cal.2001) (software reseller was not bound by EULA because it had never assented to the terms and court did not rule on validity of shrinkwrap agreements in general)."
- The court then went on to state that the EULA and TOU were not contracts of adhesion given the fact that "(1) the software at issue in this litigation with the exception of Diablo has outside packaging stating it is subject to a EULA and Battle.net is subject to a TOU; (2) the defendants installed the games and assented to the EULA; (3) the defendants went to the Battle.net website and assented to the TOU; and (4) the EULA and TOU state it is a license and ownership of software remains with Blizzard." *Davidson & Associates, Inc. v. Internet Gateway, Inc.*, 334 F.Supp.2d at 1178.
- The Court then went on to enforce the terms of the EULA and TOU between the publisher and the players. Presumably, the courts would continue to enforce the terms of the EULA and TOS/TOU agreements and prevent players from selling virtual property outside of the rules of the games.
- ^[1] **Ownership.** All title, ownership rights and intellectual property rights in and to World of Warcraft (including without limitation any user accounts, titles, computer code, themes, objects, characters, character names, stories, dialogue, catch phrases, locations, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, any related documentation, "applets" incorporated into World of Warcraft, transcripts of the chat rooms, character profile information, recordings of games played on World of Warcraft, and the World of Warcraft client and server software) are owned by Blizzard Entertainment or its licensors. World of Warcraft is protected by the copyright laws of the United States, international copyright treaties and conventions, and other laws. All rights are reserved. World of Warcraft may contain certain licensed materials, and Blizzard Entertainment's licensors may protect their rights in the event of any violation of this Agreement. TOU Sec. 10.
- **Derivative Works.** Blizzard Entertainment expressly reserves the exclusive right to create derivative works based on World of Warcraft. This means that you may not create derivative works based on World of Warcraft, without the prior express, written permission of Blizzard Entertainment. TOU Sec. 2A.
- **Sale of Items.** Blizzard Entertainment either owns, or has exclusively licensed, all of the content which appears in World of Warcraft. Therefore, no one has the right to "sell" Blizzard Entertainment's content, except Blizzard Entertainment. So Blizzard Entertainment does not recognize any property claims outside of World of Warcraft or the purported sale, gift or trade in the "real world" of anything related to World of Warcraft. Accordingly, you may not sell items for "real" money or exchange items outside of World of Warcraft. TOU Sec. 8.

Copyright

- Even if a court decided not to recognize the terms of the EULA and TOS/TOU to prevent players from trading virtual property outside the rules of the game, the courts would prevent players from violating the copyright owners' exclusive rights to make copies and make derivative works.
- To establish copyright infringement, a party must demonstrate (1) that they own a valid copyright; and (2) that the other party one of their exclusive rights under the copyright act^[1]. The copyrightability of a computer programs was firmly established after the 1980 amendment to the Copyright Act.^[2] Despite the fact that the program as a whole is copyrightable, the copyright holder must also establish that the virtual property itself is protectable. To be protectable, the virtual property must be an original work of authorship. It must contain more than a modicum of creativity; it must be more than ideas, concepts or functional items.
- Each of the MMOs has its own art style which is carried through in its virtual property. The graphical representations of the characters, weapons and tools would definitely be copyrightable. The more valuable the items, the more unique and desirable their representation or powers.
- Unauthorized Copying
- When the image of an article of virtual property is transferred in violation of the EULA or TOS to another player's inventory, the graphical representation of the article in the user's RAM would be an unauthorized copy of the article of virtual property^[3]. Just as in *MicroStar v. Formgen, Inc.*, 154 F.3d 1107 (9th Cir. 1998), even though the EULA allowed players to create new levels and trade them fee of charge to each other, the commercial use of the new levels exceed the terms of the license and was an infringement of Formgen's copyright.
- Derivative Works
- Although the unauthorized transfer of virtual property would not create liability for creating a derivative work, the players who create bots and other cheats would be liable for copyright infringement claims for creating derivative works and distributing them to other players. The use of such bots and cheats giving one player an unfair advantage over another would clearly be transformative of the original game^[4].
- In China, the government is even going after a group that is making and trading in counterfeit virtual weapons^[5] based upon their infringement of the publisher's right to create derivative works.
- ^[1] *Feist Publications Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 361-63, 111 S.Ct. 1282, 1295-97, 113 L.Ed.2d 358 (1991)
- ^[2] *Williams Electronics v. Artic International, Inc.*, 545 F. Supp. 812, 875 (E.D.Pa.1982).
- ^[3] *MAI Sys. Corp. v. Peak Computer*, 991 F.2d 511 (9th Cir. 1993).
- ^[4] *Midway Mfg. Co. v. Artic Int'l, Inc.*, 704 F.2d 1009 (7th Cir. 1983)
- ^[5] Shanghai tries 3 for counterfeiting virtual weapons (September 6, 2006) at "http://www.chinapost.com.tw/asiapacific/detail.asp?ID=89750&GRP=C".

Derivative Works

- **Is virtual property a derivative work?**
- "A work based on one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed or adapted."
- If there is an aftermarket economic value, the copyright owner is entitled to exploit it.
- *Mirage Eds., Inc. v. Albuquerque A.R.T. Co.*, 856 F.2d 1341 (9th Cir. 1988)
- *Micro Star v. Formgen, Inc.*, 154 F. 3d 1107 (9th Cir 1988)
- The copyright owner does not own all conceivable aftermarket economic value.
- *Lee v. A.R.T. Company*, 125 F.3d 580 (7th Cir. 1997)
- *Lewis Galoob Toys, Inc. v. Nintendo of America.*, 964 F.2d 965 (9th Cir. 1992)
- *Ty, Inc. v. Pubs Int'l Ltd.*, 292 F.3d 512 (7th Cir. 2002)
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Fair Use

- Once it has established that the transfer of virtual property infringes the publisher's copyright, the court would also have to contend with the issue of whether the transfer falls under the "fair use" exception to infringement. As the court in *Mircostar* said, "[e]ven though a work may be fully protected under a valid copyright, the "fair use" doctrine may allow it to nevertheless be copied by an unauthorized party. In 17 U.S.C. § 107, Congress has set out four non-exclusive factors to be used in determining the applicability of the "fair use" doctrine: (1) the purpose and character of the use, including whether it is for commercial use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect and use upon the potential market for or value of the copyrighted work.
- The district court in *Microstar* emphasized the fourth factor, and said that it was critical to the court's holding in *Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.*, 964 F.2d 965 (9th Cir.1992) cert. denied 507 U.S. 985, 113 S.Ct. 1582, 123 L.Ed.2d 149 (1993), that Nintendo admitted that it had no future plans to put out something like the Game Genie. *MicroStar v. Formgen, Inc.*, 942 F.Supp. 1312, 1317 (S.D.Cal.1996).

First Sale

- "[T]he first sale doctrine rarely applies in the software world because software is rarely "sold." See *Adobe Sys. Inc. v. One Stop Micro, Inc.*, 84 F.Supp.2d 1086, 1091 (N.D.Cal.2000) ("[V]irtually all end users do not buy-but rather receive a license for-software. The industry uses terms such as 'purchase,' 'sell,' 'buy,' ... because they are convenient and familiar, but the industry is aware that all software ... is distributed under license."). By licensing copies of their computer programs, instead of selling them, software developers maximize the value of their software, minimize their liability, control distribution channels, and limit multiple users on a network from using software simultaneously. See Christian H. Nadan, *Software Licensing in the 21st Century: Are Software "Licenses" Really Sales, and How Will the Software Industry Respond?*, 32 *AIPLA Q.J.* 555." *Wall Data Inc. v. Los Angeles County Sheriff's Dept.*, 447 F.3d 769, 785 n. 9, (9th Cir. 2006).

Trademark law

Trademark Law Aspects of Virtual Property

- Does trademark law give the trademark owner the right to exclude others from the market for virtual property?
- *Marvel Enterprises v. NCSoft Corp.*, 2005 WL 878090 (C.D.Cal.Mar. 9, 2005) (no “use in Commerce”)
- *1-800-Contracts v. When-U.com, Inc.* 414 F.3d 400 (2d Cir. 2005) (no “use in commerce”)
- *Playboy Enterprises, Inc., v. Netscape Communications Corp and Excite, Inc.*, 354 F 3d 1020 (9th Cir. 2004) (“use in commerce”)
- *GEICO v. Google, Inc.*, 330 F.Supp.2d 700 (E.D. Va. 2004) (“use in commerce”)

Arguments for User Owned Virtual Property.

Independent Economic Value

- Many have argued that players should own the virtual property that they create, buy and use because there is an external market for the property and to prevent its trade would be a restraint of trade. There is no doubt with the amount of sales occurring on eBay and through the secondary market sites like, CGN, that some are making money and other are making a living off of the authorized and unauthorized trade in virtual property. But just because there is a market for such goods does not justify authorizing it. The existence of a black or even a grey market does not justify legalizing the trade. If Sony is able to prevent grey marketers from selling Asian PSPs in Europe^[1], why shouldn't publishers be allowed to prevent the unauthorized trade in virtual property.

Mythic v. Blacksnow

- Blacksnow Interactive, a gold farming company which hired laborers in Mexico to play *Dark Age of Camelot* around the clock and collect virtual property. Blacksnow then sold the virtual property on eBay. When Mythic Interactive, the owners of *Dark Age of Camelot*, tried to put a stop to Blacksnow on the grounds that it violated Mythic's intellectual property rights, Blacksnow sued Mythic for engaging in unfair business practices and restraint of trade. Mythic defended the suit on the basis of Blacksnow's violation of Mythic's copyrights and the terms of its EULA. There was never a resolution in this case however, because it was dismissed after Blacksnow disappeared and its attorneys were no longer able to reach their client.
- ^[1] "Sony going after gray market PSP sellers, not buyers", (June 27, 2005) at <http://www.engadget.com/2005/06/27/sony-going-after-gray-market-psp-sellers-not-buyers/>

Sweat of the Brow

- Many players feel that after investing a substantial amount of time and money in the game, they should be allowed to reap the rewards of this investment. They pay monthly subscription fees of \$15 - \$20/month and spend hours on end defeating monsters and villains to acquire the rarest of virtual goods and amass gigantic virtual fortunes. With all of this effort, they believe that they have truly "earned" something. This feeling is further reinforced when other players are willing to pay people for their labor. Sometimes that labor is in the form of goods or currency and at other times it is in the form of power leveling services. Players can pay other people in third world countries to play their characters and build up the characters experience, goods and wealth for a few dollars a day.
- China stands by verdict on virtual thief^[1] - Upholding Yan's original 5,000 yuan (\$620) fine, the court said that online game players had spent time, energy and money gaining the game's equipment and adding value to the virtual goods, Xinhua news agency reported.
- ^[1] "China stands by verdict on virtual thief" (April 3, 2006) at "http://news.zdnet.com/2100-9588_22-6056849.html?tag=zdfd.newsfeed".

Estoppel

- Players are now asserting that publishers who have previously promised that the players would own virtual property, should be estopped from revoking their accounts and confiscating the player's virtual property even after the player has allegedly been cheating in the game.

Bragg v. Linden Research

- Marc Bragg, an attorney from West Chester, Pennsylvania and former *SecondLife* resident/player, is suing game developer Linden Research, Inc. ("Linden Lab") and its founder and CEO, Philip Rosendale for, *inter alia*, violation of various Pennsylvania and California consumer protection laws, fraud and conversion of his virtual property.
- The dispute arose after Bragg discovered how to bid on virtual property before it was officially put up for auction in *SecondLife*. Bragg copied the URL for a pending auction, then swapped in the ID number for land not yet up for sale publicly, so there would be no minimum bid and few, if any, competing bidders. When Linden Lab first discovered the deception, they told Bragg that they would invalidate the auction and refund his US\$200. Linden Lab subsequently decided to terminate Bragg's account and sell off his virtual property, property that was legitimately as well as illegitimately acquired.
- Linden Lab will presumably rely on the provisions of its TOS which provides that 1) Linden Lab has the unilateral right to terminate a player's account for any reason; and 2) Linden Lab owns all of the data representing the virtual property which is stored on Linden Lab's servers.^[1]
- Bragg's complaint alleges that the TOS is contrary to the many statements made by or on behalf of Linden Lab and Rosendale, who have repeatedly marketed *SecondLife* as an MMO where the players own their property. Among the representations that Bragg cites in his complaint is Rosendale's statement on June 14, 2005, in an interview with Guardian Unlimited: Gamesblog, that "We like to think of *SecondLife* as ostensibly as real as a developing nation... The fundamental basis of a successful developing nation is property ownership... **We started selling land free and clear, and we sold the title, and we made it extremely clear that we were not the owner of the virtual property.**" Complaint at ¶ 48 (emphasis added in the Complaint).
- The question is whether the TOS and Bragg's unclean hands will trump the representations made by Linden Lab to the public. Also, even if Linden Lab is successful, it will be interesting to see how the case and the fact that land ownership in *SecondLife* is not absolute will effect the growth of *SecondLife*.
- ^[1] **2.6 Linden Lab may suspend or terminate your account at any time, without refund or obligation to you.** Linden Lab has the right at any time for any reason or no reason to suspend or terminate your Account, terminate this Agreement, and/or refuse any and all current or future use of the Service without notice or liability to you. In the event that Linden Lab suspends or terminates your Account or this Agreement, you understand and agree that you shall receive no refund or exchange for any unused time on a subscription, any license or subscription fees, any content or data associated with your Account, or for anything else.
- **3.3 Linden Lab retains ownership of the account and related data, regardless of intellectual property rights you may have in content you create or otherwise own.** You agree that even though you may retain certain copyright or other intellectual property rights with respect to Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data Linden Lab stores on Linden Lab servers (including without limitation any data representing or embodying any or all of your Content).
- **3.4 Linden Lab licenses its textures and environmental content to you for your use in creating content in-world.** During any period in which your Account is active and in good standing, Linden Lab gives you permission to create still and/or moving media, for use only within the virtual world environment of the Service ("in-world"), which use or include the "textures" and/or "environmental content" that are both (a) created or owned by Linden Lab and (b) displayed by Linden Lab in-world.

Virtual Property and Real World Taxes

- With real world wealth comes real world taxes. It is bad enough that people would have to pay taxes on the real money that they earn from virtual transactions, but if virtual property and virtual money is seen to have real world value, might they eventually have to pay real world taxes on transactions all in virtual dollars?
- The Chairman of the U.S. Congressional Joint Economic Committee (JEC), Jim Saxton, believes taxing virtual economies would be a mistake. The goal of a forthcoming JEC study is to head off any premature attempt to impose tax on virtual economies.
- However, a spokesperson for the Australian Tax Office, in what is probably a world first, has said that if a virtual transaction has real world implications - if it can be attributed a monetary value - it attracts the attention of the Tax Office.^[1] In her words, "the real world value of a transaction may form part of your taxable income, even if it is in Linden dollars,"
- ^[1] Australian Tax Office Will Tax Income from Virtual Transactions (October 16, 2006)
at <http://www.daledietrich.com/gaming/category/cases/virtual-property-cases/>

Continuity

- At this point, a game publisher does not have the responsibility to its customers to maintain a game platform. If the publisher decides that the platform is no longer viable then it can discontinue that product line. *M. Leff Radio Parts, Inc., v. Mattel, Inc.* 706 F.Supp. 387 (W.D.Pa.1988). However, if the courts find that players have an ownership right in virtual property will the publisher have a responsibility to maintain the virtual world even if it becomes unprofitable?
- Recently a deadly plague hit WoW^[1]: To what extent can online gaming companies be held liable for damage or destruction caused to online players or their virtual property?
- ^[1] "Deadly plague hits Warcraft world" (September 22, 2005) at "<http://news.bbc.co.uk/1/hi/technology/4272418.stm>"

Conclusion

The law will follow the money. With the amount at stake in these virtual worlds and virtual economies, to the extent that the ever recognizes the ability of the player to own his own virtual property a virtual Pandora's box of liability, litigation and lawlessness.