

Note

A Passive Approach to Regulation of Virtual Worlds

Jacob Rogers*

Introduction

Imagine waking up one morning to find that your neighbor had erected a nude statue of himself and pointed it toward your window. Even worse, the moment you leave for work, a group of surly strangers makes your house its home. To top it off, when you arrive at the crafts store you own and manage, every customer is somehow making exact copies of your merchandise, eliminating their need to actually purchase anything.

If the described state of affairs ever came to pass, few would hesitate to describe it with words like “nightmarish” or “dystopian.” For tens of millions of people around the world, however, such a world is entertaining enough to merit paying a nontrivial monthly fee for the right to participate in it.¹ Although situations like the ones above are

* J.D. expected 2008, The George Washington University Law School; B.A., 2003, University of Chicago.

¹ As of 2006, an estimated twenty to thirty million people had joined virtual worlds such as Second Life and World of Warcraft. Woodrow Barfield, *Intellectual Property Rights in Virtual Environments: Considering the Rights of Owners, Programmers and Virtual Avatars*, 39 AKRON L. REV. 649, 653 (2006). Pricing plans for each world vary. Simply inhabiting Linden, the world of Second Life, is free, but owning land requires a Premium membership, which costs \$9.95 per month or \$72.00 per year. Second Life, Membership Plans, <http://secondlife.com/whatis/plans.php> (last visited Oct. 23, 2007). To join World of Warcraft, one must first buy the game, which costs \$19.99, GameSpot.com, World of Warcraft for PC Prices, <http://www.gamespot.com/pc/rpg/worldofwarcraft/checkprices.html> (last visited Oct. 23, 2007), and then pay between \$12.99 and

not intended to be a part of the virtual-world experience, so far they have been an inescapable component.²

Virtual worlds provide a forum for the exchange of billions of dollars annually³—a figure that will only rise with each passing year.⁴ With so much money and time invested, courts and legislatures must develop a viable legal framework to solve the current and inevitable disputes.⁵ This Note proposes one such framework.

The emerging phenomenon of virtual online worlds should be governed by a two-tier system. First, everything that occurs completely inside the world should be regulated by a terms-of-service contract.⁶ Second, transactions that occur outside the virtual world (that is, in the real world), but that involve virtual-world goods or relationships, should be treated no differently than a similar transaction involving real-world goods or relationships.

After providing a fuller explanation of the nature and significance of virtual worlds in Part I, Part II of this Note examines actual and potential disputes arising from these worlds and how legal systems have addressed or might address them. Next, Part III briefly discusses other proposals in this field and explains why they are inadequate. Part IV presents this Note's proposal and suggests some ways the proposal may be given effect.

I. An Introduction to Virtual Worlds

A. What They Are

Virtual worlds are difficult to classify. They combine nearly every aspect of modern popular culture. Part video game, part chat room, part auction site, part social network, they are capable of fulfilling a

\$14.99 per month (depending on the length of the subscription plan) to continue playing, World of Warcraft, General F.A.Q., <http://www.worldofwarcraft.com/info/faq/general.html> (last visited Oct. 23, 2007).

² See Catherine Holahan, *The Dark Side of Second Life*, BUS.WK. ONLINE, Nov. 21, 2006, http://www.businessweek.com/technology/content/nov2006/tc20061121_727243.htm?chan=search; Glyn Moody, *The Duplicious Inhabitants of Second Life*, GUARDIAN (London), Nov. 23, 2006, at 5; Daniel Terdiman, *Online Feuds a Big Headache*, WIRED, Nov. 3, 2004, <http://www.wired.com/gaming/gamingreviews/news/2004/11/65562>.

³ Victor Keegan, Comment, *Does Virtual Mean Invisible?*, GUARDIAN UNLTD. (London), July 11, 2006, <http://business.guardian.co.uk/comment/story/0,,1817901,00.html>.

⁴ See EDWARD CASTRONOVA, SYNTHETIC WORLDS: THE BUSINESS AND CULTURE OF ONLINE GAMES 65–67 (2005) (projecting nearly 100 million users by 2030).

⁵ See *infra* Part II (discussing actual and potential disputes arising from virtual worlds).

⁶ A terms-of-service contract is an agreement between the individual user and the company that developed the world. See, e.g., Second Life, Terms of Service, <http://secondlife.com/corporate/tos.php> (last visited Oct. 23, 2007).

wide range of user needs.⁷ Although the themes and environments vary, each world is characterized by a large number of users inhabiting it much as they inhabit the real world.⁸ A prominent author in the field described online virtual worlds as “intermediate environments: the first settlements in the vast, uncharted territory that lies between humans and their machines.”⁹ Second Life, one of the most popular of these worlds, has been described as “an experiment in which open-ended social interaction collides head-on with surreal engineering.”¹⁰

Generally, a virtual world is populated with avatars,¹¹ the “[r]epresentational proxies” for real-world users.¹² These real-world users pay a monthly fee for this version of dual citizenship.¹³ Inside the virtual world, users participate within the world’s framework. In worlds like EverQuest’s Norrath¹⁴ or World of Warcraft’s Azeroth,¹⁵ inhabitants complete quests in a fairly traditional computer-game-type environment.¹⁶ By contrast, in a world like Second Life’s Linden, users have no typical goals, no tasks to complete—they simply purchase property if they wish and do with it as they see fit, whether that be starting a business or building a house.¹⁷ Perhaps the most noticeable difference between virtual worlds and conventional video games is that these worlds are “both persistent and dynamic. Even when you are not [there], the environment continues to exist and changes over time.”¹⁸

⁷ See CASTRONOVA, *supra* note 4, at 4–9; Richard Siklos, *A Virtual World but Real Money*, N.Y. TIMES, Oct. 19, 2006, at C1, C4.

⁸ See CASTRONOVA, *supra* note 4, at 4–9.

⁹ *Id.* at 9.

¹⁰ Daniel Terdiman, *Second Life Intrudes on First One*, WIRED, July 21, 2003, <http://www.wired.com/gaming/gamingreviews/news/2003/07/59675>.

¹¹ Avatar is a Sanskrit word referring to the descent of a deity from heaven and incarnation in earthly form. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 150 (2002).

¹² F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CAL. L. REV. 1, 6 (2004).

¹³ See *supra* note 1.

¹⁴ EverQuest, <http://everquest.station.sony.com> (last visited Oct. 23, 2007).

¹⁵ World of Warcraft, <http://www.worldofwarcraft.com/index.xml> (last visited Oct. 23, 2007).

¹⁶ See Lastowka & Hunter, *supra* note 12, at 26–27. Completing a certain task or vanquishing a certain foe are typical of such quests. See *id.*

¹⁷ Second Life, What Is Second Life?, <http://secondlife.com/whatis> (last visited Oct. 23, 2007).

¹⁸ Lastowka & Hunter, *supra* note 12, at 5–6. Castronova describes persistence as “the most innovative feature” of virtual worlds. CASTRONOVA, *supra* note 4, at 80. They must also be interactive and governed by physical rules (although often different rules than those governing the real world). See *id.*

This Note focuses on the impact of virtual worlds on the real world. Because items inside these worlds exist independently of the user's presence, they can be traded or sold to other inhabitants for real-world dollars.¹⁹ In some worlds, such as Second Life, users can even create their own items—everything from board games to virtual helicopters—in which they have intellectual property rights.²⁰ In China, a cottage industry has developed: “gold farmers,” who work in a factory-like setting, play the early levels of games such as World of Warcraft and develop avatars to sell to wealthier users in the developed world.²¹ Whether these practices are allowed by the world's owner or not (and often they are not),²² they are an integral part of the experience for many users.²³

B. *Why They Matter*

While some in the not-too-distant past may have dismissed the virtual worlds discussed in this Note as mere games or fads, such a view is certainly incorrect today. With tens of millions of participants worldwide²⁴ and billions of real-world dollars exchanged yearly,²⁵ on-line worlds cannot be written off as child's play. Whether virtual-world inhabitants could lead more productive or fulfilling lives if they spent less time in those worlds is irrelevant to the issue's importance.²⁶ For the purposes of this Note, it is enough to be reminded that “[a]ll things artificial or invented do not fall entirely outside the ambit of reality. If they did, we would need to banish from reality all manner of human actions and creations, including buildings, languages, and—most important for our purposes—laws.”²⁷ The practical consequences of virtual worlds cannot be ignored—virtual-world activities

¹⁹ See Lastowka & Hunter, *supra* note 12, at 6–7.

²⁰ Robert D. Hof, *My Virtual Life*, BUS. WK., May 1, 2006, at 72, 75; Siklos, *supra* note 7, at C4.

²¹ David Barboza, *Ogre to Slay? Outsource It to Chinese*, N.Y. TIMES, Dec. 9, 2005, at A1.

²² See Trevor Aaronson, Feature, *Buy My Rock! South Florida's Jon Jacobs Wants to Be a Millionaire. His Business: Virtual Real Estate*, NEW TIMES BROWARD-PALM BEACH, Aug. 3, 2006; Tom Loftus, *Virtual Worlds Wind Up in Real Courts*, MSNBC, Feb. 7, 2005, <http://www.msnbc.msn.com/id/6870901>.

²³ See Loftus, *supra* note 22; Seth Schiesel, *Virtual Achievement for Hire: It's Only Wrong If You Get Caught*, N.Y. TIMES, Dec. 9, 2005, at C4.

²⁴ Hof, *supra* note 20, at 74.

²⁵ See Sam Leith, *Imagine, We Blood-Elfs Can Make an Absolute Fortune . . .*, DAILY TELEGRAPH (London), Jan. 20, 2007, at 24.

²⁶ For an amusing parody of one of these worlds, see *Get a First Life*, <http://www.getafirstlife.com> (last visited Oct. 23, 2007).

²⁷ Lastowka & Hunter, *supra* note 12, at 7.

have an impact on real-world society.²⁸ Because the populations of virtual worlds will continue to grow, resulting in a corresponding growth in resources allocated and disputes created, effective regulation is vital.

II. Virtual-World Disputes

A. Current Problems

Given the number of people participating in virtual worlds and the amount of resources devoted to them, disputes are inevitable. This Part discusses some problems that have already arisen, both in the United States and abroad, including intellectual-property infringement,²⁹ prostitution,³⁰ theft,³¹ and real-world violence.³²

The most shocking real-world event arising out of virtual events took place in 2005 in China. The virtual world in question was that of Legend of Mir.³³ The real-world crime was murder.³⁴ In the realm of virtual transactions, the circumstances are certainly not uncommon. After winning a sword inside the game, forty-one-year-old Qiu Chengwei lent the virtual weapon to a friend, twenty-six-year-old Zhu Caoyuan.³⁵ Subsequently, the sword's borrower sold it without telling his friend, keeping the 7200 yuan (nearly \$1000 U.S.) he sold it for.³⁶ When Qiu found out, he went to the police, who refused to intervene.³⁷ A month later, Qiu broke into his former friend's house and

²⁸ See Hof, *supra* note 20; Reena Jana & Aili McConnon, *Second Life Lessons*, BUS. WK., Nov. 27, 2006, at 17 (noting that Second Life “has more than one million ‘residents’ who spent \$9 million in October on virtual land, products, and services” and that “while advertising’s traditional outlets are losing eyeballs, so far this year the population of Second Life has increased 995%—a growing potential consumer audience for marketing messages”); Siklos, *supra* note 7, at C4 (reporting that Second Life “is fast becoming a three-dimensional test bed for corporate marketers, including Sony BMG Music Entertainment, Sun Microsystems, Nissan, Adidas/Reebok, Toyota and Starwood Hotels”); Emily Steel, *Avatars at the Office: More Companies Move into Virtual World ‘Second Life,’* WALL ST. J., Nov. 13, 2006, at B1, B3 (noting Second Life’s rapid increase in usership and that nearly half of its users live outside the United States).

²⁹ Loftus, *supra* note 22.

³⁰ Shawn Elliott, *Escort Mission; MMO Games Get a New Character Class: Call Girl*, COMPUTER GAMING WORLD, May 1, 2006, at 34.

³¹ *Lawsuit Fires Up in Case of Vanishing Virtual Weapons*, CHINA DAILY, Nov. 20, 2003, http://www.chinadaily.com.cn/en/doc/2003-11/20/content_283094.htm.

³² Tim Guest, *Just a Game?*, NEW SCIENTIST, May 20, 2006, at 38.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*; *Online Gamer Killed for Selling Cyber Sword*, ABC NEWS ONLINE, Mar. 30, 2005, <http://www.abc.net.au/news/newsitems/200503/s1334618.htm>.

³⁶ Guest, *supra* note 32, at 38.

³⁷ *Id.*

stabbed him to death.³⁸ Qiu soon confessed and was sentenced to life in prison.³⁹ At the trial, it came to light that the reason the police had refused to take action against Zhu was that they did not believe he had broken any laws.⁴⁰ After all, it was just a game.

This open-and-shut criminal case demonstrates a potential result of the ambiguous relationship between real-world people and their virtual-world interests. With traditional forms of property, well-established rules govern an owner's recourse if wronged.⁴¹ The same cannot be said for virtual-world property. Perhaps if the sword's lender could have sought redress from either the legal system or the game's owner (and if he had known that he had such options), a tragic event could have been avoided.⁴²

In this country, a complaint filed in May 2006⁴³ demonstrates the type of serious dispute that will arise more often as virtual worlds become more popular. By exploiting a glitch in the Second Life system, Marc Bragg was able to acquire property at substantially reduced prices.⁴⁴ According to Mr. Bragg, Linden Lab—the creator of Second Life—subsequently cut off his account, refusing to grant a credit or refund.⁴⁵ Mr. Bragg, who happens to be an attorney specializing in consumer rights and cyberlaw cases, then sued Linden Lab.⁴⁶ The suit sought \$8000 in damages for breach of a virtual-land-auction contract and for violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law.⁴⁷ Mr. Bragg later withdrew that suit in order to file a much larger claim (more than \$75,000)⁴⁸ in a higher-level state

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ The Uniform Commercial Code ("UCC") is one example. "Now adopted in over fifty jurisdictions, the UCC governs billions of consumer and business transactions each year. Its provisions doubtlessly will continue to set standards for commercial practices well into the twenty-first century." Gregory E. Maggs, *Patterns of Drafting Errors in the Uniform Commercial Code and How Courts Should Respond to Them*, 2002 U. ILL. L. REV. 81, 81–82.

⁴² A recent court case, also in China, illustrates this point. See *Lawsuit Fires Up in Case of Vanishing Virtual Weapons*, *supra* note 31 (describing a case in which the "plaintiff asked for restoring 'all the equipments' that he had accumulated plus 10,000 yuan (US\$1,200) in emotional damage").

⁴³ See Andrew Noyes, *Online Gamer Sues Over Virtual Land Dispute*, WASH. INTERNET DAILY, May 9, 2006, at 3.

⁴⁴ Miriam Hill, *Real Suit Over Virtual Property*, PHILADELPHIA INQUIRER, Oct. 20, 2006, at A1.

⁴⁵ Noyes, *supra* note 43.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Notice of Removal at 2, *Bragg v. Linden Research, Inc.*, No. 2:06-cv-04925-ER (E.D. Pa. Nov. 7, 2006).

court where the case's outcome could set legal precedent.⁴⁹ Linden then removed to federal court,⁵⁰ where, as of May 30, 2007, litigation was still ongoing.⁵¹

This lawsuit reveals a certain tension between virtual-world owners and virtual-world residents. To Mr. Bragg, Second Life's actions might seem as unjust as an 18th-century bill of attainder because he maintains that he was deemed guilty of violating the terms of service without benefit of a trial and was consequently stripped of his virtual property and citizenship.⁵² For Second Life, its users' entrepreneurship is vital to its existence.⁵³ But, as Mr. Bragg's case demonstrates, Second Life occasionally feels compelled to take seemingly authoritarian action to preserve the well-being of the virtual world and its inhabitants.⁵⁴

B. Future Problems

The murder in China, Mr. Bragg's lawsuit, and the events described at the beginning of this Note all occurred during the infancy of virtual worlds. As these worlds enter adolescence, new and even thornier problems are likely to arise. As the popularity of virtual worlds increases, not only does the number of users multiply, but the array of activities one can accomplish in a virtual world expands. Correspondingly, the opportunities for legal action will likely escalate.⁵⁵ This Part looks at some of the problems that will likely arise due to the nature of these worlds—including avatar-rights claims, constitutional claims, and various suits against game developers.

Several authors in this field have raised the possibility of legal causes of action based on wrongs done to avatars themselves—that is,

⁴⁹ See Memorandum of Law of Defendants Linden Research, Inc. & Philip Rosedale in Support of Motion to Compel Arbitration at 2, *Bragg v. Linden Research, Inc.*, No. 2:06-cv-04925-ER (E.D. Pa. Nov. 14, 2006); Danny Bradbury, *Virtual Insanity*, INDEP. (London), Aug. 9, 2006, at 8, 9.

⁵⁰ See Notice of Removal, *supra* note 48.

⁵¹ See *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593, 613 (E.D. Pa. 2007) (denying defendant's motions to dismiss for lack of personal jurisdiction and to compel arbitration).

⁵² See Bradbury, *supra* note 49, at 8.

⁵³ See James Harkin, *Get a (Second) Life*, FIN. TIMES (London), Nov. 18, 2006, (Magazine), at 18, 19–20.

⁵⁴ See *Terrorists Toss Bombs at Virtual World Peace*, AUSTRALIAN, Feb. 27, 2007, at 29 (“[W]here residents feel harassed . . . , Linden will dole out temporary banishment or similar penalties . . .”).

⁵⁵ See Dick Dahl, *Virtual World Draws Real-Life Lawyers*, LAW. USA, Feb. 12, 2007, at 16, 17.

a virtual wrong done to a virtual character.⁵⁶ The most palpable problem with this suggestion, beyond the fact that avatars are not actually people, is that the wrong would be taking place inside the virtual world, and thus within the context of that world. Presumably, users are aware when they move into a virtual world that such actions might occur as part of the experience. Users thus assume the risk of such avatar-directed crimes and should not have legal recourse in real-world courts.

But as Professor Jack Balkin observes, even if the virtual world's rules permit some types of violence, inhabitants claiming to have been "treated outrageously in ways inconsistent with civilized society" might bring claims for intentional infliction of emotional distress.⁵⁷ That scenario is certainly not outlandish. Take, for example, the case of *Hackbart v. Cincinnati Bengals, Inc.*,⁵⁸ in which the court held that intentional-tort claims are not barred simply because the wrong occurred in the intrinsically violent environment of a professional football game.⁵⁹ The analogy, though not perfect, still merits attention by the legal community.

Although no one has filed a lawsuit based on virtual rape or sexual harassment or the like, that does not mean such events are not common occurrences.⁶⁰ In one particularly noteworthy example, a virtual-world inhabitant of the game *A Tale in the Desert*, playing the role of a trader, caused an uproar when he "declared that he would not sell to women and then inquired whether one female character was for sale."⁶¹ Many players were furious that the game would allow such behavior.⁶² The perpetrator in this case turned out to be a character controlled by the developers themselves, who sought to cause controversy as a sort of experiment.⁶³

⁵⁶ Jack M. Balkin, *Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds*, 90 VA. L. REV. 2043, 2068 (2004); Barfield, *supra* note 1, at 653–54 (2006); Lastowka & Hunter, *supra* note 12, at 51–52.

⁵⁷ Balkin, *supra* note 56, at 2068.

⁵⁸ *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10th Cir. 1979).

⁵⁹ *Id.* at 521–24.

⁶⁰ See Lastowka & Hunter, *supra* note 12, at 51–52 ("[R]esidents of virtual worlds commonly complain of sexual harassment when their avatars are propositioned by others and involuntarily grabbed or kissed. Some complain of assault by offensive and violent avatar touching.").

⁶¹ Daniel Terdiman, *Heavy Price for Free Speech*, WIRED, Nov. 2, 2004, <http://www.wired.com/gaming/gamingreviews/news/2004/11/65532>.

⁶² *Id.*

⁶³ *Id.*

Such behavior, however, is not limited to developers of virtual worlds or those motivated by benign intentions. Suppose that the incident just described had occurred under more unseemly circumstances and that a court had allowed an inhabitant of A Tale in the Desert to bring a tort claim, or that the government attempted to ban virtual rapes and assaults. One wonders whether an offender could claim the First Amendment right to free speech as a defense.⁶⁴ There simply is no clear answer. Perhaps if these questions are answered now, whether in the affirmative or the negative, some amount of litigation can be avoided.

C. *Current Legal Approaches*

At least two circuits have held that the First Amendment applies to game developers, but no such clarity exists regarding the actions of game participants. One case, *Interactive Digital Software Ass'n v. St. Louis County, Missouri*,⁶⁵ involved a constitutional challenge to a city's attempt to ban the sale of violent video games to minors.⁶⁶ The Eighth Circuit held that "[i]f the first amendment is versatile enough to 'shield [the] painting of Jackson Pollock, music of Arnold Schoenberg, or Jabberwocky verse of Lewis Carroll,'" then there is "no reason why the pictures, graphic design, concept art, sounds, music, stories, and narrative present in video games are not entitled to a similar protection."⁶⁷ The court further noted that "[t]he mere fact that they appear in a novel medium is of no legal consequence."⁶⁸ Although the games at issue in that case did not constitute virtual worlds, the logic still applies. A developer of virtual worlds, such as Second Life's Linden Lab, cannot be prosecuted merely for creating an environment in which depictions of violence occur.

*James v. Meow Media, Inc.*⁶⁹ takes this protection one step further. Following the fatal 1997 school shootings in Paducah, Kentucky, several victims' parents sued several media companies, including

⁶⁴ Because the First Amendment is subject to the state action doctrine, *Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 114 (1973), its protections would be off the table in interactions solely concerning the users and developers. Once a court enters the equation, however, the issue becomes quite complex—enough that a full discussion of First Amendment issues is beyond the scope of this Note.

⁶⁵ *Interactive Digital Software Ass'n v. St. Louis County, Mo.*, 329 F.3d 954 (8th Cir. 2003).

⁶⁶ *Id.* at 956.

⁶⁷ *Id.* at 957 (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 569 (1995)).

⁶⁸ *Id.*

⁶⁹ *James v. Meow Media, Inc.*, 300 F.3d 683 (6th Cir. 2002).

video-game developers.⁷⁰ The parents claimed that the video games, movies, and Internet sites “‘desensitized’ [the shooter] to violence and ‘caused’ him to kill the students of Heath High School” and that the distribution of the material “constitute[d] actionable negligence under Kentucky law, entitling [plaintiffs] to recover wrongful death damages from the distributing firms.”⁷¹ In affirming the district court’s rejection of the plaintiffs’ claim, the Sixth Circuit recognized that “attaching tort liability to protected speech can violate the First Amendment.”⁷²

These two cases support the idea that developers of virtual worlds are not responsible for one user’s action against another user, either in the virtual world or the real one. But courts have said nothing about two other issues likely to arise: (a) a user’s liability to other users, and (b) a developer’s liability to a user stemming from the developer’s actions toward that user. Because “[v]irtual worlds operate under their own systems of private laws which often deviate sharply from those of the physical world,” courts will likely have a difficult time deciding those issues.⁷³ The prospects for legislation are even more grim. “Federal legislation in the new arena of virtual worlds also runs the risk of outstripping congressional understanding of the issues and technology of virtual worlds, as it has in other areas of technology.”⁷⁴ An optimal solution to these intractable problems will minimize the need for courts and legislative bodies to understand virtual worlds.

III. Some Other Proposed Solutions

This Part addresses various proposals advanced by legal scholars and others. Several assert that virtual property is indistinguishable from traditional property and that users should have the right to own the property they create or purchase in the virtual world.⁷⁵ Some have argued that rights such as those protected by the First Amendment should apply to virtual-world participants and that the online experience should be subject to regulation.⁷⁶ Others contend that terms-of-service contracts and end-user license agreements (“EULAs”) will

⁷⁰ *Id.* at 687.

⁷¹ *Id.*

⁷² *Id.* at 695 (citing *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964)).

⁷³ Andrew Jankowich, *EULAW: The Complex Web of Corporate Rule-Making in Virtual Worlds*, 8 TUL. J. TECH. & INTELL. PROP. 1, 5 (2006).

⁷⁴ Andrew E. Jankowich, *Property and Democracy in Virtual Worlds*, 11 B.U. J. SCI. & TECH. L. 173, 200 (2005).

⁷⁵ See, e.g., Jankowich, *supra* note 74, at 180–81; Lastowka & Hunter, *supra* note 12, at 49.

⁷⁶ See, e.g., Balkin, *supra* note 56, at 2069–70.

constrict the expansion of virtual worlds⁷⁷—a contention this Note refutes.

A. *Virtual Property as Real Property*

Most legal scholars concerned with virtual worlds agree that virtual-world property is largely indistinguishable from real-world property.⁷⁸ As Professors Lastowka and Hunter note, “[p]erhaps the most striking feature of the property systems of the virtual worlds is how closely they mirror the real world, or at least the subset known as the Western capitalist economy.”⁷⁹ Everyone recognizes that virtual property has real value (even if not everyone approves).⁸⁰ According to the LindeX, Second Life’s currency exchange market, the rate has been fairly stable—about 266 Linden dollars for \$1.00 U.S.⁸¹ Although Linden Lab has authorized the LindeX, similar markets can be found even when forbidden by a virtual world’s developer.⁸² For example, Blizzard Entertainment, the proprietor of World of Warcraft, technically does not allow real-world sales of virtual-world items.⁸³ Despite this, a user can purchase the game’s currency in several increments (10,000 gold pieces costs approximately \$650 U.S.)⁸⁴ or even a leveling-up service (taking an avatar from level one to level forty in six to eight days for around \$80 U.S., with more money and more time required for more levels).⁸⁵

Lastowka and Hunter identify and dispose of two potential problems, one metaphysical and one temporal, caused by recognizing virtual property as real property.⁸⁶ First, all virtual items are “simply entries in a database resident on a server that permits a participant’s computer monitor to display images already present within the

⁷⁷ See, e.g., Jankowich, *supra* note 73, at 8–11.

⁷⁸ See *supra* note 75.

⁷⁹ Lastowka & Hunter, *supra* note 12, at 30.

⁸⁰ E.g., *id.* at 29–30.

⁸¹ Second Life, LindeX Market Data, <http://secondlife.com/whatis/economy-market.php> (last visited Oct. 23, 2007).

⁸² See, e.g., Team VIP Virtual Item Provider, <http://www.team-vip.com/Main.php#servers;65> (World of Warcraft) (last visited Oct. 23, 2007).

⁸³ World of Warcraft, Terms of Use Agreement, Clause 8, <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited Oct. 23, 2007).

⁸⁴ Team VIP Virtual Item Provider, <http://www.team-vip.com/Main.php#servers;65> (click on any of the links on the left side) (last visited Oct. 23, 2007).

⁸⁵ Power-Leveling, <http://www.power-leveling.com/WNormalPowerleveling.asp> (last visited Oct. 23, 2007).

⁸⁶ Lastowka & Hunter, *supra* note 12, at 40–43.

software.”⁸⁷ But tangibility is not a prerequisite for property ownership in the modern world.⁸⁸ When one “owns” a piece of land, one really owns something more ephemeral, like “a freehold estate, or a leasehold, or an easement interest.”⁸⁹ Furthermore, intellectual property is almost by definition intangible, but intellectual property rights are protected nonetheless.⁹⁰ Second, the temporal issue is even less of a problem. Although virtual property is impermanent (for example, it may cease to exist if the user stops paying the monthly fees), many types of universally recognized real-world property are as well (for example, copyrights and leaseholds).⁹¹ Only preconceived notions of property, then, are left to support a distinction.

B. The Regulatory Approach

In his treatment of virtual worlds, Professor Balkin argues against commodification⁹² and for government regulation.⁹³ He calls the “real-world commodification of virtual worlds . . . the single most important event in shaping the relationship between law and virtual worlds.”⁹⁴ Professor Balkin discourages such commodification, predicting “that it will give rise to a whole host of problems that will stimulate courts and legislatures to regulate virtual worlds and create law for them.”⁹⁵ As one example, Balkin envisions a (not unlikely) scenario in which a world’s designer or its inhabitants create a virtual casino.⁹⁶ If, as is the case with most virtual worlds, the virtual currency is convertible into the real-world variety, then visitors to that casino “have essentially done an end run around state prohibitions on gambling.”⁹⁷ States, then, would have a clear interest in regulating such activity.⁹⁸

Oddly enough, given his seeming aversion to government intrusion into virtual territory, Professor Balkin’s primary solution for avoiding virtual-world disputes is regulatory legislation in the form of

⁸⁷ *Id.* at 40.

⁸⁸ *Id.* at 40–42.

⁸⁹ *Id.*

⁹⁰ *See id.* at 41.

⁹¹ *Id.* at 42–43.

⁹² “Commodification” refers to “people purchasing and selling elements of virtual worlds in the real world.” Balkin, *supra* note 56, at 2059.

⁹³ *See id.* at 2090–95.

⁹⁴ *Id.* at 2060.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 2061.

⁹⁸ *See id.*

“statutes of interration,” combining the idea of statutes of incorporation with the Latin word for “earth.”⁹⁹ Through these statutes, “governments could offer a variety of different types of legal regimes for operators of virtual worlds to choose from,” just as businesses can choose under which law to establish themselves.¹⁰⁰ According to Professor Balkin, the developers’ incentive to interrater would be “freedom from liability for the actions of the individual players.”¹⁰¹

Two issues make this freedom from liability unlikely as an effective incentive.¹⁰² First, it is very unlikely that developers of virtual worlds can be held liable in tort for their users’ actions.¹⁰³ As discussed above, *Interactive Digital Software* and *Meow Media* demonstrate that developers will not be held responsible for one user’s action against another user, whether that action occurs in the virtual world or in the real one.¹⁰⁴ Second, Professor Balkin assumes that courts will refuse to enforce the waivers of liability commonly found in the EULAs and terms-of-service contracts that developers of virtual worlds require users to accept before becoming a citizen of that world.¹⁰⁵ As discussed below, such an assumption is likely ill-founded.

C. Terms-of-Service Pessimism

Professor Balkin is not the only one suspicious of terms-of-service agreements. In fact, this seems to be a common position.¹⁰⁶ Andrew Jankowich, one of the strongest opponents of terms-of-service agreements, argues that the development of virtual worlds will be restricted by EULAs and that “proprietors should acknowledge that the reflexive unilateralism of EULAW is not sustainable.”¹⁰⁷ With the coined term EULAW, Jankowich refers to “[t]he EULAs, [terms-of-service agreements], rules of conduct, posting policies, naming policies, and other contracts that govern virtual worlds” that “are the products of owners and lawyers engaging in a centralized process of lawmaking through a form of nonnegotiated, infinitely modifiable, proprietor-

⁹⁹ *Id.* at 2090 & n.83.

¹⁰⁰ *Id.* at 2090–91.

¹⁰¹ *Id.* at 2094.

¹⁰² Congress’s demonstrated reluctance to thoroughly investigate the subject and respond with appropriate legislation further diminishes the prospect of freedom from liability serving as an effective incentive. See, e.g., Jankowich, *supra* note 73, at 200.

¹⁰³ See *supra* Part II.C.

¹⁰⁴ See *supra* notes 65–72 and accompanying text.

¹⁰⁵ Balkin, *supra* note 56, at 2094–95.

¹⁰⁶ See, e.g., Jankowich, *supra* note 73, at 5, 52–53; Jankowich, *supra* note 74, at 192–95; Lastowka & Hunter, *supra* note 12, at 50–51.

¹⁰⁷ Jankowich, *supra* note 73, at 53.

friendly regulation.”¹⁰⁸ Although some of these criticisms are well-founded, the overall negative assessment is unwarranted.

In his research, Jankowich has identified several oddities and perceived injustices of agreements between developers and users.¹⁰⁹ As one troubling example, the developers of Anarchy Online apparently only make the EULA available after the game had already been purchased.¹¹⁰ After surveying a large number of agreements, Jankowich found that virtual-world inhabitants are unclear as to what the agreements actually say,¹¹¹ most proprietors reserve the right to change those agreements at any time,¹¹² and most agreements contain very similar terms.¹¹³ These findings lead him to fear that “[t]he uncertainty, modification rights, and homogeneity of virtual world EULAs suggests a restrictive future for virtual worlds.”¹¹⁴ In his conclusion, however, Jankowich acknowledges that “[s]ome proprietors have begun to react to outside influences and to provide greater freedom in areas like virtual property trade.”¹¹⁵ Given this fact and its implications, the bleak future Jankowich envisions seems an unlikely one. Part IV below discusses in detail why contracts between developers of virtual worlds and those worlds’ inhabitants are a sufficient and desirable governing mechanism.

IV. A Proposed Solution

The solution proposed in this Note is a rather simple one. It attempts to take into account both the social and economic importance of virtual worlds as well as the thorny legal issues they present. The proposal is that virtual worlds should be governed by a two-tier system. First, transactions and behavior that occur completely inside the virtual world should be regulated by a terms-of-service contract. Second, transactions that occur outside the virtual world (that is, in the real world), but that involve virtual-world goods or relationships, should be treated no differently than real-world transactions that in-

¹⁰⁸ *Id.* at 9.

¹⁰⁹ To inhabit the virtual world Anarchy Online, for example, users must agree to abide by, among many other rules, “the antianarchistic admonition that ‘[y]ou will always follow the instructions of authorized personnel while in Anarchy Online.’” *Id.* (quoting Anarchy Online, Rules of Conduct, <http://anarchy-online.com> (follow “Rules of Conduct” hyperlink) (last visited Oct. 23, 2007)).

¹¹⁰ *See id.*

¹¹¹ *Id.* at 16–19.

¹¹² *Id.* at 46–47.

¹¹³ *Id.* at 49–50.

¹¹⁴ *Id.* at 52.

¹¹⁵ *Id.* at 53.

volve similar-in-nature real-world goods or relationships. Though the first prong may be a dramatic break from the bulk of scholarship in this field,¹¹⁶ the second is consistent with the widely accepted idea that virtual property is indistinguishable from traditional forms of property.¹¹⁷

A. *The In-World Component*

At first blush, it does not seem controversial to suggest that everything that happens between participants inside a virtual world should be governed by the terms of the world itself, as set forth in a terms-of-service contract. Virtual worlds are analogous to the real world—only the terms of the real world are called “laws” and inhabitants do not have the chance to agree before joining. One would be hard pressed to deny that many laws, like some terms of service, are either silly or unjust (or both).¹¹⁸ For potential inhabitants of a virtual world, then, it is as if they could choose what country to be born into, with all the laws and culture that would go along with such a choice. It stands to reason that someone with such a choice should be bound by her decision for as long as she chooses to stay there.

1. *Why Contracts Are Enough*

The most powerful objections to allowing user agreements to govern virtual-world activities are those developed by Jankowich.¹¹⁹ He contends that virtual-world terms-of-service agreements are too inaccessible, too complicated, too easy for the developer to change unilaterally, and, overall, far too dominated by the interests of the owner of the virtual world.¹²⁰ Most, if not all, of those concerns, however, are mirrored in our real-world legal system.¹²¹ Most people outside of law firms and Capitol Hill do not know how to access the

¹¹⁶ See, e.g., Balkin, *supra* note 56, at 2094–95; Jankowich, *supra* note 73 *passim*; Jankowich, *supra* note 74, at 178; Lastowka & Hunter, *supra* note 12, at 50–51.

¹¹⁷ See *supra* Part III.A.

¹¹⁸ Collections of such laws apparently are quite popular. Examples include ROBERT ALLEN, *CRAZY LAWS AND LAWSUITS: A COLLECTION OF BIZARRE COURT CASES AND LEGAL RULES* (2005) and SHERRY LINDSELL-ROBERTS ET AL., *WACKY LAWS, WEIRD DECISIONS, AND STRANGE STATUTES* (2004).

¹¹⁹ See *supra* Part III.C.

¹²⁰ Jankowich, *supra* note 73 *passim*.

¹²¹ One journalist who specializes in covering virtual worlds described the user agreements as “blur[ring] the line between designing a game and framing a constitution.” 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* (Nov. 2003), available at <http://www.juliandibbell.com/texts/owned.html>.

United States Code and would not know how to navigate it if they found it. Also, laws are rarely renowned for their clarity. Most importantly, there is no reason to believe that lawmakers are more responsive to their constituents' desires than businesses are to old-fashioned market forces.¹²²

As long as potential virtual-world inhabitants act rationally and the barriers to entry for developers of virtual worlds remain relatively low,¹²³ EULAw (as Jankowich calls it), should be no more problematic than real law. Having a wide variety of virtual worlds gives users an incentive to read the contracts they are agreeing to—an incentive that most people ordinarily lack. The rise in the number and variety of virtual worlds provides a perfect opportunity for people to *choose* the society they would like to inhabit. The typical consumer does not read a terms-of-service contract because the costs of doing so (primarily the time spent reading) outweigh the benefits, which are most often essentially zero.¹²⁴ But a potential virtual-world inhabitant, who may voluntarily spend hundreds or thousands of hours in this world, will have a greater incentive to read and understand the contract's terms.¹²⁵ The benefit to a user of reading a terms-of-service agreement, to ensure that her ideal experience is possible, will thus likely outweigh the cost of the time expenditure.¹²⁶

¹²² For a legislature to react to its constituents' concerns, first the legislators must be informed of the problem. Then the legislation must be drafted, followed by debate in one house, a vote, debate in the other house, and another vote. Legislation may not make it through this gauntlet for any number of reasons. Market forces, on the other hand, can react with minimal lag time—gas prices are perhaps the most visible example. For a discussion of this point, focusing primarily on Internet and technology issues, see Bradford L. Smith, *The Third Industrial Revolution: Policymaking for the Internet*, 3 COLUM. SCI. & TECH. L. REV. 1, 17 (2001) (“[T]echnology-based and other market-driven mechanisms can often address online problems in ways that are more responsive and efficient than traditional regulatory intervention.”).

¹²³ Castronova predicts that the growth of virtual worlds on the supply side “will follow the boom-bust-boom pattern of many new technologies.” CASTRONOVA, *supra* note 4, at 132. As he was writing in 2005, there were “one or two dozen obviously successful [virtual] worlds in operation, but perhaps over 100 in development.” *Id.*

¹²⁴ In support of this hopefully uncontroversial point, see Frank Partnoy, *Synthetic Common Law*, 53 U. KAN. L. REV. 281, 337 (2005) (“Private law [agreed to in contracts] is essentially private statutory law and therefore suffers from a lack of clarity and completeness. . . . Clarity is just as elusive as it is in complex statutes.”).

¹²⁵ See *Long v. Holland Am. Line Westours, Inc.*, 26 P.3d 430, 444 (Alaska 2001) (“[H]uman nature makes it more likely that a purchaser will read a tour contract, whose purpose presages pleasure, than an insurance policy, whose purpose connotes misfortune.”).

¹²⁶ Second Life's terms-of-service agreement is around 7000 words, but the substance of each point and subpoint is in bold text and plain language. Second Life, Terms of Service, <http://secondlife.com/corporate/tos.php> (last visited Oct. 23, 2007). World of Warcraft's policies are divided into categories on an easy-to-find page on its website—and there are even visual aids.

Jankowich and other detractors of EULAs and terms-of-service agreements argue that even if a user had an incentive to read the agreement, the effort would be to no avail because such contracts are inherently unilateral and homogeneous.¹²⁷ These arguments do not hold up in light of what has actually happened. As more people inhabit online worlds, a major way for one world to set itself apart from its competitors is a more customer-friendly set of terms. For instance, Second Life has done exactly that by allowing users to own their creations.¹²⁸ This allowed one inhabitant who had developed a game played by avatars inside a virtual world to sell that game to a publisher in the real world who is releasing it for video game consoles and cell phones.¹²⁹ Sony, the proprietor of Everquest, although still taking the position that all virtual-world items are its property, decided that the most profitable course of action was to set up its own auction site for those items, taking ten percent of the amount of each transaction.¹³⁰ The tremendous popularity of these decisions¹³¹ makes it less likely that future competitors will take more restrictive stances. Even if the industry's steady growth does not continue, developers of virtual worlds will have an incentive to set terms that will attract new customers (including users whose own virtual worlds have shut down) and retain current ones.

2. *Benefits of Governance by Contract*

Even more important than the likely prospect of user agreements becoming fairer to users is that there is great reason to believe that they are binding. For example, Mr. Bragg's seemingly groundbreaking case against Linden Lab discussed above is "just a standard breach of contract claim, not a claim about 'virtual land.'"¹³² This "pretty old-fashioned" case is simply about a consumer claiming to have purchased a bundle of rights that the business denies having sold.¹³³

World of Warcraft, In-Game Support Policies, <http://us.blizzard.com/support/article.xml?articleId=20309> (last visited Sept. 22, 2007).

¹²⁷ See *supra* Part III.C.

¹²⁸ See Hof, *supra* note 20, at 75; Second Life, Terms of Service, <http://secondlife.com/corporate/tos.php> (last visited Oct. 23, 2007).

¹²⁹ Hof, *supra* note 20, at 75; Meez, <http://www.meez.com/home.dm> (last visited Oct. 23, 2007).

¹³⁰ Alex Pham, *EBay Bans Auctions of Virtual Treasures*, L.A. TIMES, Feb. 3, 2007, at C1, C4.

¹³¹ See Dahl, *supra* note 55, at 16; Pham, *supra* note 130, at C1, C4.

¹³² Noyes, *supra* note 43, at 3 (internal quotation omitted).

¹³³ *Id.* (internal quotation omitted).

Court after court has upheld the binding nature of EULAs.¹³⁴ *Davidson & Associates, Inc. v. Internet Gateway*¹³⁵ is just one recent example. In that case, a federal district court in Missouri held that the EULAs and terms-of-use agreements at issue constituted contracts under the Uniform Commercial Code and were neither procedurally nor substantively unconscionable.¹³⁶

*Cairo, Inc. v. Crossmedia Services, Inc.*¹³⁷ takes this one step further. In *Cairo*, even though the plaintiff, Cairo, claimed it had not explicitly agreed to the terms of use of the website of defendant Crossmedia Services, Inc. (“CMS”), the court held that the “use of CMS’s web site under circumstances in which Cairo had actual or imputed knowledge of CMS’s terms effectively binds Cairo to CMS’s Terms of Use and the forum selection clause therein.”¹³⁸ Thus, even if a virtual-world inhabitant did not have to actively manifest assent to a user agreement, constant trips to that virtual world should result in imputed knowledge of the agreement’s terms. The Second Circuit expressed the general approach to Internet contracts in *Register.com, Inc. v. Verio, Inc.*¹³⁹: “While new commerce on the Internet has exposed courts to many new situations, it has not fundamentally changed the principles of contract.”¹⁴⁰

As demonstrated by the most recent development in the *Bragg* case, however, courts may occasionally find a EULA provision unacceptable. In a May 2007 ruling, a federal district court in Pennsylvania denied Linden Lab’s motion to compel arbitration, holding that the terms-of-service contract’s arbitration clause was procedurally and substantively unconscionable under California law.¹⁴¹ Even in the event that the court’s reasoning is followed by other courts, though, the general validity of EULAs will remain unchanged. In fact, such

¹³⁴ See, e.g., *Mortgage Plus, Inc. v. DocMagic, Inc.*, No. 03-2582-GTV-DJW, 2004 U.S. Dist. LEXIS 20145, at *21–27 (D. Kan. Aug. 23, 2004) (finding a forum-selection clause in a terms-of-service agreement enforceable); *Novak v. Overture Servs., Inc.*, 309 F. Supp. 2d 446, 451–52 (E.D.N.Y. 2004) (same); *DeJohn v. .TV Corp. Int’l*, 245 F. Supp. 2d 913, 921 (C.D. Ill. 2003) (same); *Hughes v. McMenamon*, 204 F. Supp. 2d 178, 181 (D. Mass. 2002) (same).

¹³⁵ *Davidson & Assocs., Inc. v. Internet Gateway*, 334 F. Supp. 2d 1164 (E.D. Mo. 2004), *aff’d sub nom. Davidson & Assocs. v. Jung*, 422 F.3d 630 (8th Cir. 2005).

¹³⁶ *Id.* at 1176–80.

¹³⁷ *Cairo, Inc. v. Crossmedia Servs., Inc.*, No. C 04-04825 JW, 2005 U.S. Dist. LEXIS 8450 (N.D. Cal. Apr. 1, 2005).

¹³⁸ *Id.* at *14.

¹³⁹ *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393 (2d Cir. 2004).

¹⁴⁰ *Id.* at 403.

¹⁴¹ *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593, 611–13 (E.D. Pa. 2007).

an opinion provides guidance to virtual-world owners about how to draft their agreements to be more likely to be upheld in the future.

One of the primary virtues of the proposed approach, then, is that courts will only have to interpret contracts and will not have to address the near-infinite variety of imaginable scenarios they would face if virtual-world events were actionable in real-world courts. Beyond practical workload considerations, the integrity of the judicial system is maintained by avoiding the creation of inapt metaphors to deal clumsily with arguably fake events. In the early days of the Internet, courts “analogized [Internet service providers] to telecommunications carriers, newsprint publishers, landlords of dance halls playing music illegally, landlords for the operators of infringing record swap-meets, and illegal radio stations.”¹⁴² Courts seem equally ill prepared to decide whether one avatar, a representational proxy of a human, is capable of raping or abusing another, and if so, what law would apply.

This restrained position is not intended to suggest that virtual-world events are trivial. As discussed above, quite the opposite is true.¹⁴³ Rather, the immense significance of online events is the motivation behind this proposal. Market forces will best be able to regulate what happens in these worlds. The judiciary’s role is to ensure that owners and users of virtual worlds adhere to the rights and responsibilities they decide to allot. The only job for real-world courts, one for which they are well equipped, will be the interpretation and enforcement of the terms-of-service contracts.

B. The Real-World Component

The second part of this proposal is that real-world interactions between real-world inhabitants involving goods or services in the virtual world should be regulated in the same way as analogous interactions involving real-world goods or services. This part of the proposal deals primarily with the buying and selling of virtual-world items in real-world markets. As discussed above, such a transaction varies little (if at all) from buying or selling tangible “real” items.¹⁴⁴ In fact, selling a virtual house seems less abstract than many ordinary real-world transactions.¹⁴⁵ A person can see and interact with a virtual house much more easily than a piece of a corporation in the form of a

¹⁴² Dan Hunter, *Cyberspace as Place and the Tragedy of the Digital Anticommons*, 91 CAL. L. REV. 439, 474 (2003) (internal citations omitted).

¹⁴³ See *supra* Part I.B.

¹⁴⁴ See *supra* Part III.A.

¹⁴⁵ See Lastowka & Hunter, *supra* note 12, at 41–42.

share of stock. More importantly, the fact that individuals and corporations spend vast sums of real-world money on property and services in virtual worlds¹⁴⁶ indicates that rational actors view virtual goods as valuable. Because millions of virtual-world inhabitants already treat virtual property as real property, and because there is no strong logical distinction between the two, the law should treat the two forms of property equally. This is not to argue that users necessarily own the virtual items they create, buy, and sell; whether user ownership exists should depend on the terms of the service agreement between the user and the virtual world's owner.

This proposal distinguishes between virtual-world events and real ones. It allows claims for real-world actions relating to virtual-world behavior, but disallows claims for virtual-world actions relating to that same behavior. The reason for this distinction is that real-world actions involve actual people governed by actual laws. Although virtual-world actions are carried out by avatars that are ultimately controlled by those same people, the avatars do not (and should not) have rights of their own. When an avatar is defrauded, insulted, or even murdered, no real-world court could hear a claim brought by the avatar or bring the offending avatar to justice. Even though the person controlling the avatar is really the one who has been swindled or embarrassed, the difference between identical offenses directed toward the user and those directed toward the avatar is crucial. When a person interacts in a virtual world, it is in the context of the physical and social laws of that world. If the experience is a negative one, there are built-in options for recourse, such as reporting the offense to the virtual world's proprietors or to other users.¹⁴⁷ Similarly, a person's actions in the real world are limited by real-world laws and norms. A California resident, for example, who is the victim of an auction site scam has recognized avenues for seeking a remedy.

Because of the distinction between virtual-world events and real-world events, the two prongs of this proposal can coexist. Both virtual-world and real-world actions are governed by sets of expected rights and responsibilities, the former by terms-of-service agreements and the latter by laws of a government. Nothing in the nature of our real-world laws leads one to believe that they do not govern one's

¹⁴⁶ See Aaronson, *supra* note 22; Loftus, *supra* note 22.

¹⁴⁷ In Second Life, a user can access the "Abuse Reporter tool" at any time on the in-world tool bar. Second Life, Community Standards, <http://secondlife.com/corporate/cs.php> (last visited Oct. 23, 2007). In situations calling for immediate assistance, a user can seek out avatars with the last name "Linden," who are designated "in-world Liaisons." *Id.*

real-world actions (that is, one's own actions, not those mediated through an avatar) simply because the actions relate to virtual-world goods or relationships.

C. Implementation

This proposed framework will solve the virtual-world problems that have already arisen as well as the ones likely to arise in the future. Problems between game users and game owners will be settled according to the terms of the contract. In addition, the terms of service will set forth the mechanisms for solving problems between users inside the world. If an inhabitant believes that the game owner is not enforcing the rules of the game, it then becomes a problem between user and owner to be settled according to the contract. Problems arising from auction-site sales of virtual items, on the other hand, will be governed by established laws governing Internet commerce. Assaults on a virtual world's operational capability could be dealt with in the same manner as other attacks on servers. Implementation is thus a simple matter—courts would settle virtual disputes by interpreting a real-world contract, and real-world problems, as usual, would be governed by the appropriate real-world laws.

Conclusion

This Note's proposed course of action may be characterized not as one of inaction, but as one of restraint. It may take more effort for courts and legislatures to resist the temptation to meddle in virtual-world affairs than to give in. This Note calls for restraint not because virtual worlds do not deserve legal attention, but because they are too important and innovative to be subject to it. The terms-of-service contracts perform a similar regulatory role both inside and outside the virtual world, enforced as law inside the virtual world and as a legally binding contract outside. For a real-world individual thinking about dual citizenship in a virtual world, it is as if she could choose her country of birth, with all the laws and culture that would accompany such a choice. If only the first life allowed such a decision.