

Avatars Inc. – The Legal Personality of Avatars
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Introduction

Digital technology is detaching information from the physical plane, where property law of all sorts has always found definition. Virtual world property is, likewise, detached from the physical plane. Historically, intellectual property law concentrated not on ideas, but on the expression of those ideas. The ideas themselves were considered to be the collective property of humanity. To express an idea was to make it physical. The law protected the physical expression. One did not get paid for the idea but for the ability to deliver it into reality. The value was in the conveyance and not the thought conveyed. In other words, the bottle was protected, not the wine (Barlow, 2004).

Virtual property rights in all of the virtual worlds are demarcated by End User License Agreements (EULAs). At present, initial rights are allocated to traditional intellectual property rights holders. However, a brief look at the divergent types of virtual worlds is needed here. They can be labelled as property-opposed worlds, the virtual world creators who openly reject virtual property rights, in contrast to property-endorsing worlds, whose creators have granted property rights. Since virtual worlds first began, a huge market for virtual products has emerged. However, most virtual world EULAs prohibit the trade of virtual products outside the virtual environment. They further deny any property claims users may assert against them, even within the virtual environment. Unfortunately, any legal dispute between users and operators over virtual property in such worlds would likely be decided by these agreements.

In this way, traditional intellectual property rights holders have been systematically eliminating any emerging or potential virtual property rights to which virtual world platform users may be entitled. This is causing an imbalance in resources and rights. Many “objects” are being created in worlds that are owned and operated by large corporations who own the underlying code which enables “objects” to be created. In other words, the code is the bottle and the “objects” are the wine. The law of contract and the law of property have customarily balanced each other. The law of contract permits parties to realize the value of idiosyncratic preferences through trades. The law of property usually limits the burdens that parties may place on the productive use or marketability of high-value resources by means of contract. A virtual object or virtual symbol is given its meaning at the level of code, even if that meaning is only fully realized in the context of the environment. Divorcing anything from its necessary context creates an illusion of non-existence. It is the context of virtual worlds that give virtual property its existence, and successful legal protection of virtual property depends on careful consideration of this context.

The structure and building-blocks are the legal property of the creator-company; however, each character is the embodiment of a user's story. This chapter will explore how this is possible if avatars are given legal personality. As a juridical entity, an avatar will have a legal name which may be used as its brand which, in turn, can accumulate good will and be trade marked. As a legal person, the avatar can be deemed an author for copyright purposes as well as design right purposes. The virtual world interface and the virtual property rely on each other, but their co-dependence does not make them less "real" unless one or the other ceases to exist at the code level. So long as there is careful delineation as to how far virtual property rights extend, many of the problems raised by virtual property's uniquely digital nature may be avoided. Hence, both the bottle and the wine may be protected.

Avatars as Juridical Entities

Video games have placed users in the position of a main character almost since their inception. Virtual world platform makers can present users with an array of very visually and aurally distinct characters. Virtual world platform users, in turn, invest time and money imbuing their avatars with personality. "Each person identifies with those capacities, physical and mental, to which he had direct access, and we see that this identification affords each person a normative sense of self." (Gauthier, 1986) The sophistication of the stories told and of the characters that inhabit them has risen along with the audiovisual capabilities of the systems running virtual world platform software (Bartle, 2004). A richly developed avatar could attract copyright protection. This avatar could then contribute intellectual capital to a corporate entity. If avatars were treated like corporations, they would possess legal rights and liabilities similar to corporations. Their behaviour, entitlements, and obligations could be analysed by analogy to those of the individuals they represent.

Each avatar would register with the appropriate authority which would then give it legal capacity and the powers of an individual. It is now possible for individuals to incorporate. *Lee v Lee's Air Farming*, [1961] AC12, demonstrates that it is possible to distinguish between acts a person does in an individual capacity and those performed in a corporate capacity. Likewise, it should be possible to distinguish between the actions of an avatar in a virtual world and the actions of an individual in the real world. A relationship is created between the user, as one legal person, who is willing to work for/play for the avatar which would be another legal entity; just as Lee made a contract with his own company to work for the company. Further, assuming that the avatarial corporation is not a sham, then the capacity of that avatarial corporation to make a contract with the user cannot be impugned merely because the user is the agent of the avatarial corporation in the negotiations. It is possible for one person to act in a dual capacity (Ibid; see also, First Corporate Law Simplification Act 1995 Aus.)

This does not mean, however, that the courts may choose to ignore this legal personality in certain circumstances. These circumstances may vary, but usually occur where assets of the corporation are insufficient to meet its liabilities or when the corporation is being used as a shield behind which an individual is attempting to escape some legal obligation. The corporate veil may then be pierced in this manner or by arguing that the avatar is not original or not developed enough. Avatars which are richly developed have greater chance of being copyrighted. Judge Learned Hand remarked in *Nichols v Universal Pictures Corp.*, 45 F.2d 119 (2nd Cir. 1930), “that the less developed the characters, the less they can be copyrighted.”

In *Walt Disney Productions v Air Pirates*, 581 F.2d 751 (9th Cir. 1978), the court found cartoon characters such as Mickey Mouse and Donald Duck copyrightable, noting that while “it is difficult to delineate distinctively a literary character . . . [w]hen the author can add a visual image . . . the difficulty is reduced.” Further, “a comic book character, which has physical as well as conceptual qualities, is more likely to contain some unique elements of expression.” (Ibid) This idea was reinforced by Judge Posner in *Gaiman v McFarlane*, 360 F.3d 644 (7th Cir. 2004). A writer of an issue of the comic “Spawn” sued the artist of the same issue, alleging joint authorship in several characters (Ibid). Discussing “Count Cogliostro,” one of the characters at issue, the court noted first that the script and dialogue written by plaintiff would not alone have made the Count distinct enough to grant him copyright protection, but that the writing combined with the artist’s visual rendering of the character was enough to create a character sufficiently delineated to be protectable (Ibid). The court also distinguished “stock” characters (not protectable) with a distinct character like the Count (protectable)(Ibid).

Some virtual worlds have a selection of distinctly named (and often times voiced) characters. However, the users themselves are often required to create their own characters. They are offered “stock” visual models which have been designed by the virtual world platforms’ creators (not protected), but the name, actions, and many other subtleties of the character’s story are the product of the user’s interaction with the virtual world platform (protectable). Copyright in characters raises many interesting issues both in terms of infringement and in terms of potential joint authorship with users. It also provides the initial capital contribution needed by the user to incorporate the avatar.

Trade Marks

“The use of authorial marks in relation to the sale of creative works, like the use of business trade marks in relation to the sale of goods and services, creates social benefits that deserve legal protection. Authorial attribution acts as an incentive to authorial production, provides valuable information to consumers, and provides additional social benefits that go beyond issues of market efficiency. However, the

use of authorial marks, like the use of trade marks, can also create social harm.” (Lastowka, 2005) Trade marks depend upon public consciousness yet provide little corresponding recognition of the public’s contribution. By connecting a symbol to an object, the public contributes to the authorship of trade marks. This correlation grants a word or icon meaning as the representation of a particular object (Wilf, 1999).

There is, however, a predisposition to identify the producer of the trade mark as the sole possessor of rights. The argument being that the producer designed the mark and invested in its proliferation through advertising. Frank Schechter (1970) articulated a now classic formulation: “a trade mark represents good will accrued over time.” He maintained that society as a whole benefited from the trade mark holder's vested interest in maintaining quality across numerous transactions. As such, the trade mark holder both invents and sustains the worth of the mark. Thus, their claim to private ownership ought to be protected (Ibid). That said, trade marks act as a communicative sign which is a placeholder for a robust but intangible cultural relationship between producer and consumer. The very existence of this relationship begs the question of the consumer's creative role. Stephen Carter (1990) has called trade marks ‘owning what does not exist.’ How do two parties with competing interests (virtual world platform developers and the users) work to create trade marks within pre-trade marked worlds? The issue of user entitlement is indeed noteworthy for trade marks.

A trade mark is not simply a phrase or symbol or trade dress. But rather, it is the product of an act of dynamic communication. Two types of association can be made: (1) initial meaning, where the producer affixes a sign to a package, and (2) secondary meaning, where the public associates sign and product as connected. What will be proposed now is a third kind of association: tertiary meaning. The tertiary meaning is the placing of a sign-symbol in a context (Wilf, 1999).

Rights and privileges of trade mark owners, according to Lockean justifications, are limited so as not to intrude upon the public right to either a linguistic or cultural commons (Carter, 1990). As such, private trade mark privileges are controlled in order to prevent harm to the commons. In virtual worlds, users want to be able to create their own marks out of the virtual cultural commons; while, on the other hand, the virtual world platform developers want to limit users’ use of the company’s real world trade marks. The balancing test is not only between virtual private rights and virtual public good, but also between corporate private rights and users’ public good. However, the underlying Lockean premise is that through the sole creation of the trade mark, its holder has established ownership. Moreover, all property rights belong to the trade mark holder (Wilf, 1999).

By incorporating the tertiary meaning of a trade mark into virtual worlds, an

alternative, in which private virtual world platform developer trade mark rights are limited from the very beginning and users' virtual marks are allowed to flourish, is accomplished. The user authorship model addresses the question of collective identity. It is the collective personality of virtual culture that participates in the authorship of trade marks and that act of collective labour establishes a stake to trade mark symbolism contemporaneous with any private claims.

This works well in a virtual world setting in a variety of ways. First, it recognizes an overlooked role of the public, in this case the virtual world platform user, in creating property rights. Proprietary rights of tangible goods are ordinarily assigned to the person who controls the means of production. In intellectual property, the stakes are cultural and more personal. Both the virtual businesspeople and the virtual consumers form an interpretive community whose reading of trade mark symbolism casts it in the role of creating authorial-like meanings about the mark itself. Bourdieu (1991) positions language within a social context; all language consists of words and a linguistic context which informs how those words are defined. For Bourdieu, language is contextualized meaning. It is not static nor an idealized dictionary full of words, but a dynamic exchange of signs, interpretations with its meaning shifting from one context to another.

Trade mark creation is a two-step process. First, a producer affixes a symbol to the product. In the virtual world, it may be that Jedi Joe affixes two swooshing Js to the light sabres he produces. Second, the public associates the symbol with the product. All the superior Jedis want to acquire a light sabre with the swooshing Js because they are better-made or more prestigious light sabres. They would then be called JJs. The producer affixing a symbol might provide primary meaning; while secondary meaning embodies the idea of public association. This association takes place in the midst of a market where linguistic exchange parallels the transfer of goods. For example, in *Coca-Cola Co. v Seven-Up Co.*, 497 F.2d 1351 (C.C.P.A. 1974), the Court held that "Uncola" lacked linguistic meaning until acquired in the marketplace. Both the producer and the consuming public are joint authors.

Further, this co-authorship paradigm provides a public stake in all trade marks. Not simply those marks that are charged with status/personal meaning or those that might threaten the cultural or linguistic domain, but the over-all regulation of trade marks by the public is justified as a compelling public purpose. The creators of virtual trade marks must be able to have some control over their marks. Even according to classical trade mark doctrine, public regulation of trade marks varies with the distinctiveness of the mark. There is always a core public interest that cannot be lost. Nor should this core interest disappear in virtual worlds.

Some legal theorists have grappled with the problem of what constitutes a community, often seeking to locate community in discourse (Ackerman, 1984; Fiss,

1982). Virtual world residents would argue for a linguistic or interpretive community. These communities should have the collective rights over its cultural creation. The question, ultimately, is one of legal authority. “When I use a word,” said Humpty Dumpty in Lewis Carroll’s (2000) *Through the Looking Glass*, “it means just what I choose it to mean - neither more nor less. The question is which is to be the master - that's all.”

Copyright

Copyright law has been the first line of defense for the virtual world platform companies, but the protection afforded to the virtual world platform companies can be equally applied to the virtual world platform users. The question is what is being protected? Is it the backdrop and venue provided by the virtual world platform companies or the dialogue, action, and plot provided by the virtual world platform users? The structure and building-blocks are the legal property of the creator-company; however, each character/avatar is the embodiment of a user’s story. The question of derivative or transformative works then presents itself.

The computer program on the server controls the logic of the virtual world platform and maintains the state of the virtual world. Software logic generally is defined as ‘the sequence of instructions in a program’ (TechEncyclopedia, 2011). The virtual world logic is the set of instructions that defines the types of objects that appear in the virtual world and the events that can occur in this environment. For example, the virtual world logic defines the appearance and power of a particular weapon and determines what a character must do before advancing to a new skill level. For these authored works, copyright would likely vest with the virtual world platform company. The state of the game is the state of the virtual world at any time and includes the number of users in the world, the identity and assets of those users, and the time of day effective in the virtual world (Ibid).

The user controls his avatar from his personal computer; the server program must accept messages from the user’s personal computer to determine the current state of the user’s avatar (Bartle, 2004). In this instance, copyright would likely vest with the virtual world platform user. Only the server knows the activities of all avatars in the virtual world platform, the server program must send messages to each user’s personal computer to update the state of the virtual world for that user (Ibid). As such, copyright would likely vest in the server program and thus, with the virtual world platform company. To maintain the state of an user’s avatar, the server program must operate a character database. The character database contains the name, profession, and skills of the avatar associated with each user and a list of the assets possessed by that avatar. Here, copyright would likely vest with the virtual world platform user. Although the character database identifies the assets the user possesses, the database does not store the appearance or functionality of those assets. The database stores only the location of the code defining the appearance or

functionality of the asset. Copyright would likely vest with the virtual world platform company as would also perhaps a sui generis database right.

Items of value to users, such as virtual armour, swords, currency, etc., are represented in a database as integers. Virtual world platform companies maintain that the virtual world platform user should be afforded no protection for the integer as a numeric concept. Further, they believe that the virtual world platform user should be afforded no protection for the database containing either the integer or the physical server on which the integer resides. The virtual world platform company believes that it should receive protection for these assets (*ProCD, Inc. v Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996); see also, UK CDPA, s 3A (as amended by the Regulations)).

Moreover, there is also the possibility of gaining a sui generis database right protection which would come into existence automatically upon creating the database. To benefit from the database right protection, there must have been a substantial investment in obtaining, verifying, or presenting the contents of the database (Ibid at Regulation 13(1)). This is an equally strong argument for the virtual world platform companies as well as the virtual world platform users. Each user is creating their own personal database which has required a substantial investment in time, money and energy.

The protection afforded to the virtual world platform user should be for the particular integer (bits) as used in the virtual world platform (context)(Meehan, 2005). If the virtual world platform maker changed or upgraded the virtual world platform and altered the underlying representation, then an equivalent representation would be made (e.g., a different integer stored in a different database), and it would be the new representation that would be protected. Additionally, the virtual world platform user does not have a right to that integer outside of the context of the virtual world, and in particular outside of the context of the user's account for that virtual world. (This makes for interesting arguments regarding e-Bay and other outside sales.) Another user may, for example, have the same virtual light sabre and therefore have protection over an equal integer stored elsewhere (in the context of the other user's account). Likewise, if the virtual world platform is migrated (moved) to a different physical server, the user has a right to the migrated bits, the new bits representing her account, and not to the bits on the old server (Ibid).

To put this into context, multiple users may possess a light sabre. Only one copy of the software code that defines the appearance of a light sabre exists in the server memory, and the location of that code in the memory has an address. The character database only stores this address to represent the asset. When a user loses the light sabre, the server program simply deletes its address from the list of assets

associated with that user's character; when a user gains a light sabre, the server program adds its address to the list.

So when should 'bits in context' be protected? Virtual world platform users feel that bits in context should be protected from theft or loss. Cases have already presented themselves where a user's virtual property (the bits) in an online virtual world platform (the context) has been lost. Sometimes this has been allegedly due to a hacker. Sometimes this has been due to in-world fraud. In addition to any related civil or criminal charges based on the fraud or theft, the remedy for loss of virtual property would be replacement. This would be where possible, replacement of the virtual property, as opposed to providing a monetary equivalent. This relieves the court of trying to determine the real-world value of virtual property and will preclude placing a potentially extreme monetary burden on the responsible party.

Although the virtual world platform logic pre-defines many assets such as swords and potions, more complex assets such as houses are not pre-defined because the user has the freedom to design and build the asset (e.g., *Ultima Online* Renaissance Playguide, 2000). Copyright would likely vest with the virtual world platform user or as an alternative, a design right or possible trade mark. The more complex assets are composed of simpler, pre-defined assets (Ibid). For example, a house is composed of walls, floors, and furniture. The virtual world platform logic pre-defines a variety of walls, floors, and furniture, and the user selects the types and configuration of these simpler assets when building a house. If the user owns a house, the character database represents the house as a list of the addresses that identify the location of code defining the simple assets composing the house. Copyright would likely vest with the virtual world platform company. *Second Life* adopted a novel approach to this issue. They stated that they would retain the rights in the back office source code, but the front end code and user generated designs, materials, and content would go to their respective owners/creators (Baage, 2006).

The computer program on the user's personal computer controls the messaging that occurs between the user's computer and the server program (Bartle, 2004). The computer program also presents the user's view of the virtual world, which includes displaying the virtual world platform graphics and playing sound (Kines, 2001; King, 2001). Technology has evolved to a point where plausible interactive characters are now the norm. Virtual world platform characters have individual recognizable faces, are equipped with cool-looking weapons, and roam visually impressive environments. Perhaps it is time that these avatars be given a legal personality to accompany their highly lifelike world.

Many (not all) virtual worlds allow avatars to be modified over time. Many (not all) of those modification allow the avatar to achieve more, or to achieve it more easily, to wield greater power within the virtual world, or just to see cool things in the

virtual world platform (Salem & Zimmerman, 2004; Bartle, 2004; Grimmelmann, 2004). Sometimes, it is the virtual objects that come into the avatar's possession that provide the benefit. These objects could be virtual currency, virtual weapons, virtual gadgets, and so on. It matters not whether these increased possibilities are treated as attributes of the avatar or as a distinct virtual item. They are always desirable. They could be confirmation of success, the keys to unlocking Jedi mastery, or markers of social status. Moreover, for most all the reasons that people lust after possessions in the real world, they lust after possessions in virtual worlds (Ibid.; Bartle, 1996; Yee, 1999-2004). A thriving trade follows (Dibbell, 1998; Simpson, 1999). As history has demonstrated, where there is capital, there is law to protect it. In the case of *Morissette v United States*, 342 U.S. 246 (1952), the Supreme Court remarked that, "Stealing, larceny, and its variants and equivalents, were among the earliest offences known to the law that existed before legislation." Hence, users accumulate not just experiences but property. "Property [being] nothing but the basis of expectation," according to Bentham cited by Munzer (1990), "consist[ing] in an established expectation, in the persuasion of being able to draw such and such advantage from the thing possessed."

Property-Opposed Worlds

Not all virtual world platform creators agree with this idea. The End User License Agreements (EULAs) of property-opposed worlds deny all users' virtual property rights which may allow for a claim against a virtual world creator. *World of Warcraft* (WoW), the most popular virtual world in the United States, is a good example. Blizzard Entertainment, which owns and operates *WoW*, includes the following in its EULA §8:

"You may not purchase, sell, gift or trade any Account, or offer to purchase, sell, gift or trade any Account, and any such attempt shall be null and void. Blizzard owns, has licensed, or otherwise has rights to all of the content that appears in the Program. You agree that you have no right or title in or to any such content, including the virtual goods or currency appearing or originating in the Game, or any other attributes associated with the Account or stored on the Service. Blizzard does not recognize any virtual property transfers executed outside of the Game or the purported sale, gift or trade in the "real world" of anything related to the Game. Accordingly, you may not sell items for "real" money or otherwise exchange items for value outside of the Game."

The contract is clearly adamant that the users do not have any right to the accounts for which they pay, let alone to any virtual property within those accounts. As such, users have no right to buy, sell, gift, or trade any such goods. Needless to say, this provision is regularly breached. Elsewhere in the EULA, Blizzard asserts that it owns all objects in the game, and that it may terminate user accounts at any time, for any reason (Ibid at §7).

Another highly popular world is owned by NCsoft, the operator of *Lineage*. The Lineage User Agreement §4(d) also strictly limits user rights which includes the following: “[Y]ou agree that you do not own the account you use to access the service, the characters NC Interactive stores on NC Interactive servers, [or] the items stored on these servers” *Lineage*, in contrast to *WoW*, allows users to upload their own content into the virtual world. Nonetheless, the EULA limits a user’s rights even as to her own content. She must agree to grant the operator a perpetual right to do essentially anything the operator wants with the user-created content (Ibid at §6(c)).

These EULAs are representative of property-opposed virtual worlds. Their terms deny users any claims to virtual property. A pragmatic argument in favour of virtual property rights would be to point out that users are trading over \$200 million in virtual property; therefore, they must be relying on property rights. A related policy argument would be that courts should protect virtual property rights because failing to do so would destroy an otherwise viable market (Westbrook, 2006). From an outside point of view, users seem to have exclusive possession of their virtual products along with an ability to transfer those products to others. According to this argument then, to deny the existence of property rights under such circumstances would be ignorant or naïve.

The virtual world platform creators disagree. First, trade among users may suggest the existence of rights; but there is no clear underpinning structure to these rights between users and operators. Second, the very conditions that give rise to putative property rights are controlled by the virtual world operators, themselves. Despite appearances, the virtual world operators know that they possess the virtual products insofar as they possess the entire world. They can prohibit transfer by changing the code. They can destroy any value virtual products might have by providing identical goods to every user. They can even destroy all products by shutting off the world completely. On the other hand, doing any of these things may destroy their business.

Property-Endorsing Worlds

Linden Lab’s *Second Life* purports to be different. *Second Life* announced that it would protect the virtual and intellectual property rights of its residents. *Linden Lab*’s CEO, Philip Rosedale, has said, “We like to think of Second Life as ostensibly as real as a developing nation If people cannot own property, the wheels of western capitalism can’t turn from the bottom.” (Baage, 2006) To the users of his world, Rosedale says, “You create it, you own it--and it’s yours to do with as you please.” (Ibid) Linden Lab even sells virtual land directly to users, who can have their own island for \$1,675 plus \$295 per month (*Second Life--Land: Islands* (2011)). Linden Lab appears strongly committed to protecting the virtual property rights of *Second Life* residents.

A careful reading of the Terms of Service (2011) suggests, however, that Linden Lab's protection of residents' property is not as vigorous as it first seems. The Terms of Service state: "[Linden Lab retains] the perpetual and irrevocable right to delete any or all of your Content from Linden Lab's servers and from the Service, whether intentionally or unintentionally, and for any reason or no reason, without any liability of any kind to you or any other party" Linden Lab retains the right to destroy content in a virtual world where everything is content. To the extent that this license term is valid, residents have no claim against Linden Lab even for the loss of all of their property. While Linden Lab is happy to sell you an island for almost \$2,000, the Terms of Service emphasize: "Linden Lab does not provide or guarantee, and expressly disclaims ... any value, cash or otherwise, attributed to any data residing on Linden Lab's servers." In other words, the virtual world operator has no obligation to protect the value of users' property, and it reserves the right to do anything it wants with that property. This includes the right to copy, use, reproduce, or analyze user content for almost any reason.

The seeming disparity between Rosedale's statement and the Terms of Service may be reconcilable. Rosedale and Linden Lab are committed to virtual property rights insofar as they are committed to protecting and fostering a resident's stock of in-world goods, and to protecting a resident's in-world property rights against the infringement of other users. In short, Linden Lab is committed to protecting property in resident-resident conflicts but not in operator-resident conflicts. Linden Lab may be expressing, in part, a commitment to respect residents' intellectual property rights as well as resident-resident virtual property rights. This commitment would not preclude them from deleting resident-copyrighted designs, for example, and would be consistent with its EULA. In *Bragg v Linden Lab*, Pa. Magis. Dist. Ct., Chester Cty., No. CV-7606, complaint filed 5/2/06, available at <http://pub.bna.com/eclr/cv7606.pdf>, Linden Labs demonstrated their commitment to protecting residents' rights. The *Bragg* case shields residents from those who wish to obtain property through questionable or fraudulent means. Moreover, Linden Labs' failure to protect all possible residents' property claims may just be a necessary precaution. They may not be able to remain in business if faced with the risk of a server failure deleting vast amounts of resident property, and opening them up to millions of dollars in liability.

Current State of Copyright

A relevant and key question here is whether a copyright exception should be created for user-generated content on the basis that it is "transformative". The principle is important in light of the *Gower's Review* (2006) which recommended exceptions for creative, transformative, or derivative works and caricature, parody or pastiche. First, virtual worlds consist of mainly images and text; and thus, the most obvious choice is copyright. There is no requirement of formality necessary for copyright to

vest in each creation. The categories of elements that may receive copyright protection under a current understanding of copyright law are as follows: text (fiction and code), digital images, building designs, music, computer generated works, and multimedia/database. Secondly, as users craft visual and textual avatars and objects in virtual worlds, copyright is directly implicated. There is the real possibility of derivative works. There is also the argument to be made that a transformative work has been created.

Conclusion

The structure and underlying code may vest copyright in the virtual world platform company; however, each avatar is the embodiment of a user's story. As a legal person, the avatar could be deemed an author for copyright purposes. As a juridical entity, an avatar will have a brand name which may be used to create good will and be trade marked. If an incorporated avatar is given rights within the context of the virtual worlds, then virtual world interface and virtual property can maintain a balanced co-dependence which will make them more "real" until one or the other ceases to exist at the code level. So long as there is careful delineation as to how far virtual property rights extend, many of the problems raised by virtual property's uniquely digital nature may be avoided. Hence, both the bottle and the wine may be protected.

In the end, the process of intellectual exploration - whether it is modern painting, Darwin's voyages, or gaming in virtual worlds - may be much the same. Whether we call it a profession or a preoccupation, when we return to the same activity again and again, what we learn in the exploratory process transforms us. In this spiral of activity we explore, digest, create, transform ourselves, and explore again.

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This note is only intended to give a brief summary and general overview of this area of law. It is not intended to be, nor does it constitute, legal advice and should not be relied upon as doing so.

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