In recent years, more and more people have become members of virtual online worlds through the promulgation of massively multiplayer online role playing games (MMORPGs). As of December 28th, 2008, World of Warcraft, a popular MMORPG, reached 11.5 million players – a figure that would make the fictional world of Azeroth more populated than Cuba. It is possible that by 2011, four out of every five people who use the Internet will work or play in a virtual world. With so many players investing time and money into these online games, legal issues have begun to arise that draw close parallels between game rules and real world laws. Issues such as individual rights and character rights as designated by in-game End User License Agreements (EULAs), ownership of in-game property, gold farming and child labour, and criminal prosecution and jurisdiction for in-game crimes. This paper critically examines the close proximity of in-game legal issues to legal issues faced in the real world, and argues that as more people begin to adopt these technologies, the lines between virtual and real will become increasingly more difficult to discern.

Blurring Identities and Citizenship

Insomuch as one expects representational powers, such as the right to vote, to freedom of speech, to ownership of land, and so on, as recompense for obeying his or her Canadian civic duties – such as taxation – many apply to other countries of residence, one might similarly expect to be granted equivalent rights whilst taking residence in a virtual world and paying taxation by way of in-game and real life monetary fees. Individuals are sometimes as patriotic about the lands inhabited by their character players or avatars as they are about their home country, shouting “for the Horde!” at World of Warcraft conferences, and sporting Azeroth-emblazoned regalia during everyday life; something akin to wearing the maple leaf across one’s chest. The legal issues arising from this trend are twofold; initially – what rights of citizenship do participants in the virtual world of a game hold, which are eschewed, and under what authority? Additionally, to what extent, and from what precedent can fees and subscription payments, as well as an active participation in a game in which one participates as co-author of the sum experience through role-play and character creation be justifiably sufficient in granting the usual rights of citizenship afforded to individuals reciprocally from their civic duties.

To be sure, gaming companies, as proprietors of virtual worlds, ascribe the same legal duties to the citizens of their virtual worlds as do real countries across the world. Insomuch as a citizen must

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3 World of Warcraft, Http://www.worldofwarcraft.com
obey the laws of his/her country, lest s/he face punitive measures, so too must an avatar. Perhaps a less cited obligation is that of civil participation. While it is not uncommon for citizens of a nation to face jail time for avoiding civic participation, such as jury duty, it is seldom cited in reference to virtual worlds.

**MDY Industries v Blizzard Entertainment, Inc.** Blizzard, the maker of *World of Warcraft* is suing Michael Donnelly, creator of a program called *MMO Glider* that allows players to gain levels and in-game wealth through playing the game automatically while the player is away from the keyboard. Blizzard argues that this violates their EULA, which enforces participation while the character is logged in. The important feature here is that the human player must be present, not simply the avatar logged-in, in order for the EULA to be upheld. From this case, a particularly interesting precedent is emerging – if an avatar without a human player actively monitoring and controlling its actions does not hold the right, despite the monetary contributions of the human, to participate in the game, then where is the line drawn between the representational rights of the avatar as a virtual citizen, and the human as a real citizen in a virtual world? T. L. Taylor observes that

Outside of any individual player’s time the account is in fact devoid of meaning. It takes a player to create a character and it takes the time of the player to develop that character. Through their labor they imbue it with qualities, status, accomplishments. Indeed, while the owners of a game provide the raw materials through which users can participate in a space, it is in large part only through the labor of the players that dynamic identities and characters are created, that culture and community come to grow.

As further cases of the kind illustrated above, continue to arise and blur the lines of virtual citizenship, an onus is placed on Canadian lawmakers, and indeed lawmakers abroad, to determine exactly where the rights of the virtual citizen reside. Further legal investigation, possibly leading to a ruling on the exact nature of virtual worlds is necessary to establish legal precedent for the rights of Canadian citizens' dual citizenships in the worlds of Azeroth, Norrath, Second Life, and the plethora of other worlds emerging daily.

**Blurred Labour and Property Rights**

Unlike common law property – say shoes, intellectual property in virtual worlds, computer games, and other code-based intellectual property are “non-rival goods”. So for example, when I am wearing my shoes, you are not. In a computer game or virtual world however, we could both be wearing my shoes – or at least my player's shoes. Non-rival goods notwithstanding, some distinctions between intellectual property and common law property still apply.

Right now there is a man somewhere entering a shoe store. Inside the store, television monitors are broadcasting information on the latest footwear. Other customers are browsing through the displays piled high with shoeboxes. The man speaks to the salesperson and then selects a pair of sneakers. As he leaves the store he realizes the shoes are not exactly what he saw advertised on the television screens. Confused, the man backtracks into the store and asks to make a return.

"We don't give refunds here," replies the salesperson, "this isn't real life".

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Some folks would prefer to collapse the distinction between intellectual property and common law property, on the grounds that most virtual property is similar to personal property; the clothes the character wears, the armour they acquire, and the sword they use to fight. Others would like to kept them separate.

**Dispute Resolution.** Comparing TOS Agreements in respect of ‘IP infringement’ both eBay and Second Life warn players and traders not to infringe IP rights, yet both are one-sided in favouring their respective business interests, and the TOS found to be ‘unconscionable’. Unconscionability normally arises in disputes about contractual terms that are so oppressive as to amount to a penalty clause, which as such is unenforceable. Perhaps the intention behind eBay’s User Agreement was to establish an “eBay law” akin to like the collective agreement in a public university, where disputes between the members are resolved internally, by dispute resolution. eBay ‘applies the principles of ADR to an online context as a pre-emptive way of managing and resolving conflict before it reaches litigation’. The State of California would have had none of it, however. The State law trumped eBay User Agreement and its subsidiary PayPal’s clickwrap license calling the User Agreement ‘unconscionable’ for several reasons, though in *Evans v. Matlock* the court held that the eBay user agreement arbitration clause did not apply to disputes between users.

**Sweat of the Brow**

As the previous section began to illustrate, acquiring these virtual items, and gaining a powerful or well-established character in an MMORPG is no small investment of time and labour on the part of the player, or “sweat of the brow” in legal terms. Some argue, as cited above, that without the labour of the players, the worlds of MMORPGs would simply not exist; or at least – not function. Game companies recognize and encourage this labour; making “trades” or “professions” such as mining and blacksmithing integral parts of many MMOs, requiring many hours of “farming” of materials in order to create or acquire more powerful items, or monetary wealth. Some games, including *Star Wars Galaxies*, or *Graal Kingdoms* even allow players to create homes in which their avatars can take residence, invite friends, hold parties, and engage in all manner of avatar-based socialization. While the impetus for player-driven “playbour” is ubiquitous in MMOs, partly as a compelling factor in player retention, the ownership of the fruits of said labour is a matter of some debate. While some companies, such as Linden Lab – proprietor of *Second Life*, allow players to have complete ownership over created merchandise, stating “you create it, you own it – and it’s yours to do with as you please,” others, referring again to *World of Warcraft*, retain full possession of all items, money, and character traits acquired in-game;

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16 Linden Lab terms of service.
Blurring Our Real And Virtual Worlds

All title, ownership rights and intellectual property rights in and to the Game and all copies thereof (including without limitation any titles, computer code, themes, objects, characters, character names, stories, dialog, catch phrases, locations, concepts, artwork, character inventories, structural or landscape designs, animations, sounds, musical compositions and recordings, audio-visual effects, storylines, character likenesses, methods of operation, moral rights, and any related documentation) are owned or licensed by Blizzard.\textsuperscript{17}

Problematically, real world value has often been applied to the labours being undertaken in MMORPGs such as \textit{World of Warcraft}. This is also true of other games, \textit{World of Warcraft}, despite expressly prohibiting (as above) the sale of their intellectual property, is still the most popular target of account resale through online account auction sites such as www.accounts.net as of the time of this writing. While originally thought to be a fringe activity only for the obsessed, gamers are coming to terms with the practise of trading real-life money for progression in a game's world. Sony Entertainment's \textit{Playstation Home} has wholeheartedly implemented monetary fees for homes, clothes, and other accessories. Even offline, single-player games have been indulging in sale of in-game items; individuals playing \textit{Tales of Vesperia} on the Xbox 360 can enter the Xbox Marketplace to purchase level and statistic improvements, and in-game items for their characters – so as to enhance or facilitate play. Given that work being undertaken in the virtual worlds of MMORPGs is similar to work being undertaken at businesses and corporations worldwide\textsuperscript{18}, questions begin to arise at whether there is legal wrongdoing present via the practise of MMO providers retaining ownership of the products of literally millions of hours of unpaid labour.

The "sweat of the brow" standard for originality was the \textit{de facto} standard in law for judging copyright protection in Canada until 2004, "originality" being the basic requirement for copyright protection, leaving the courts to define and apply the standard. The main controversy at that time was between "the creativity school" which required only a "scintilla of creativity," and the "sweat of the brow school," which did not.\textsuperscript{19} Then in 2004, the Supreme Court set out to clarify the meaning of "originality" in Canadian copyright law.\textsuperscript{20} Faced with a battle between two opposing schools, the "sweat of the brow school" and the "creativity school", the Court refused to take sides in the debate. The "sweat of the brow school" failed because its standard was too author-centred. The "creativity school" failed because its standard was too public-centred. The Supreme Court fashioned its own definition of originality called "skill and judgment", which struck a balance between promoting the public interest and obtaining a just reward for the creator. The Supreme Court’s "skill and judgment" standard was deemed "workable, yet fair," better attuned to the dual purpose of copyright law in Canada.\textsuperscript{21} Unfortunately for game players, acquiring virtual items and gaining a powerful or well-established character in an MMORPG by "sweat of the brow" is insufficient to earn Canadian copyright protection in 2009.

\textbf{Virtual Currency Exchange}

One consequence is the blurring of real and virtual rights is the virtual currency exchange that

\textsuperscript{17} World of Warcraft End User License Agreement.
\textsuperscript{18} Yee, Nick. 2006. The labor of fun. \textit{Games and Culture}. 1.1(68-71).
permits players who want to own virtual land and buy virtual clothing for their avatars, to solicit the assistance of so-called gold farmers willing to work on their behalf\textsuperscript{22}, often in exchange for real-life currencies. Perhaps this blurring was a consequence of between virtual worlds like Cybertown\textsuperscript{23}, Active Worlds\textsuperscript{24} and Second Life,\textsuperscript{25} and popular auction sites like eBay, Overstock.com and WeBidz\textsuperscript{26} began last year, when intellectual property purchased in Second Life was subsequently sold on eBay. Or was the blur because the eBay Founder was also an investor in Second Life? Or maybe the blur was due to distinctions in the definitions of ‘online game’ and ‘virtual world’?\textsuperscript{27}

\textit{Anshe Chung.} In 2004 the economy of Second Life was tested to determine if it could sustain the real life of a real person, a young boy living in a developing country. The resident avatar Anshe Chung supported the real boy by selling Linden dollars earned by providing services for other residents. In 2006 the Anshe Chung avatar had a net worth exceeding one million US dollars. There is always the potential for cloning however, especially the copying of successful avatars, such as that of the Anshe Chung avatar in Second Life,\textsuperscript{28} making identity theft issue in the virtual world similar to a real world identity theft of a real person's identity.

\textit{Bragg v Linden Research.} Marc Bragg acquired virtual land under an avatar name at a reduced price by way of unauthorised auction, which Linden Lab considered to be fraudulent, and froze Bragg's account pursuant to its terms of service, confiscating all of his virtual property and currency. The court held that the arbitration clause in Linden Lab’s TOS was ‘unconscionable’ and therefore unenforceable.\textsuperscript{29} In California contractual defenses such as ‘unconscionability’, may invalidate arbitration agreements. Under California law, the jurisdiction of Linden Labs, the clickwrap license was found procedurally unconscionable because it was a 'contract of adhesion', where Second Life program was the party of superior bargaining strength and Bragg the subscribing party who could only click to accept or leave the site. A TOS agreement that says a provider does not have to buy back the currency, and that the currency merely represents the right to use the service, does not mean that the currency has no value from the standpoint of criminal law, tax law, securities law, or any other area that invites analysis of value.\textsuperscript{30} This ruling, whether sustainable on appeal or not, has sent ripples through virtual world user communities.\textsuperscript{31} Two comments can be made concerning Judge Robreno’s decision in the Bragg case.

1. Our review of the literature confirms that computer users ignore or forget to read important instructions and feedback presented in text and other visual displays. Why should a legal document on a website be any different?
2. Discrete motor activity of the index finger on a mouse button or arrow key does not require ‘understanding’ of anything, and does not therefore denote ‘assent’ or ‘consent’ to anything.

On the other hand the clickwrap license should have become automatized in the experienced

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\textsuperscript{26} TopTenREVIEWS, Inc. (2008). http://online-auction-sites.toptenreviews.com/
\textsuperscript{29} Bragg v Linden Research Inc., No. 06-4925 (E.D. Pa. May 30, 2007)
user by now. Should have, but again, automatized to what? Internet users have always expected a game to play, and instructions to ignore.

**Virtual World or Online Game?**

Linden Lab distinguishes its virtual world from online games, 'in part because activity there revolves around a functioning economy in which players own anything they create or possess.' In so doing so, eBay has exempted Second Life specifically from their ban on auctioning virtual game components such as currency, clothes and weapons from online games and virtual worlds. The terms of service in eBay explain it is an online auction and a place to deposit money - like a bank, yet not a bank because it does not give interest. Perhaps it’s more accurate to say that eBay is like the safe deposit box in a bank, where an account holder can store their money or someone else’s, their own property or someone else’s. Perhaps it was this clandestine image among the traders, that prompted eBay to de-list auctions for property from virtual worlds and online games. In doing so, eBay avoid complaints from third-party trading such as: 'account control by password change', 'the bait and switch of real items with dupes', and 'non-delivery', while forcing some traders into the hands of giant third-party operations that buy and sell virtual goods. The apparent benefits for auction buyers in alternative trading sites like SL Exchange and Station Exchange are: 'protected privacy', 'WYSIWYG', and 'automated delivery'. Not all problems have been addressed, however. Whereas the Terms of Service of SL Exchange Auction Service have a tightened minimum age requirement, and law-like communication etiquette between users to anticipate defamation, traders still do not have to show proof of copyright licence even a CC licence in declaring ownership of intellectual property before trading.

The story of blurring began with Second Life and eBay, both Internet Service Providers (ISP’s), both located in the United States. The main difference between them is that Second Life is a massively multiplayer online game (MMOG), and eBay until last year at least, was an online auction website selling player regalia. The terms of service in Second Life ‘recognize the residents’ right to retain full intellectual property protection for the digital content they create in Second Life, including avatar characters, clothing and scripts. This right is enforceable and applicable both in-world and offline, both for non-profit and commercial ventures. You create it, you own it – and it’s yours to do with as you please.

**Money laundering.** A recent concern has been that since online auction websites set rates for swapping Linden dollars for 'real' money, the real world value of a transaction may become taxable income. ‘Currency has become the subject of concern in economic circles in regard to possible taxation and its potential use in money laundering.’ The eBay site states that ‘under the copyright laws, the owner of a particular copy of a copyrighted work is generally entitled to resell the particular copy they own, though copyright protection prevents them from copying and reselling the copies.’ US copyright is a personal property right that if transferred, must be in writing and signed by the owner, and is normally made by contract. Under the Copyright Act a work is protected from the time it’s created for

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38 Linden Lab terms of service.

the author’s lifetime plus 70 years. However, registration is not a condition of US copyright protection.\(^{40}\) US trademarks distinguish the source of a ‘good’ of one party from those of others, while a service mark identifies the source of a service rather than a product.\(^ {41}\) eBay acknowledges that ‘Trademark infringement usually involves using someone's trademark on a good or service in a way that may confuse others about the source or affiliation of the goods or services.

**The QQ coin.** Since eBay banned gamers from selling virtual game assets last year, a thriving industry of virtual trading sites has filled the vacuum. Virtual currency is blurring the boundaries between the online and real worlds and challenging legal limits.\(^ {42}\) Virtual currencies are in use in many countries but none more deeply than in China. One Internet company in China called Tencent Holdings Ltd. designed a payment system in 2002 called the QQ coin to allow its 233 million regular registered users to shop for treats in its virtual world. Marketers created its online play money to sell such things as virtual flowers for instant-message buddies, cell phone ringtones, and magical swords for online games. Then last year something happened that Tencent hadn't originally planned. Online game sites beyond Tencent started accepting QQ coins as payment. The coins appeal as a safer, more practical way to conduct small online purchases, because credit cards aren't yet commonplace in China. There, a "Level 75 Tarutaru," an advanced character in the game Final Fantasy XI is selling for $599.99.\(^ {43}\) After the People’s Bank of China issued an edict tacitly aimed at Tencent and its coin, the Shenzhen-based company was forced to take action. Among other things, it sued Taobao for selling QQ coins online, and no longer offered coins to top-scoring gamers to keep them playing, as they once did.\(^ {44}\) Even though many game publishers technically forbid trading their online currencies for real money, gamers dubbed "gold farmers" try to make money by winning online assets and selling them for cash to less successful players.

**Value for Money**

While a logical counterargument might state that the items and wealth created by players are of no monetary benefit to MMO providers, as they could simply manipulate code to create these virtual items, a significant source of income for the games industry is the direct result of player activity – game development, improvement, and game modifications. Through beta releases and in-game suggestions systems, forums and metagame elements, and direct player-made modifications or “mods”, MMORPGs and other online games are made better (and thus more profitable), or new games are created altogether from the arising modifications – all of this occurring without royalty, and often even without acknowledgement of the contributing authors – again, the players themselves. By financially benefiting from the uncompensated labour of players, games companies could be seen as exploiting a source of free labour. Kucklich notes that:

> While it is impossible to estimate the monetary value of these benefits from modding, the sale of 1.5 million copies of *Counter-Strike* [a game which arose from modding] by the end of 2003 (Computer Gaming World, 2003) indicates that modding is an important economic factor in the digital games industry: [...]. The problem with that is that the modders' leisure is being commodified

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\(^ {40}\) U.S. Copyright Office, [http://www.copyright.gov/circs/circ1.html#wei](http://www.copyright.gov/circs/circ1.html#wei)


\(^ {42}\) Zonk (January 2007). A Chinese Virtual Currency Challenges the Yuan, SlashDot, [http://www.boingboing.net/2008/06/19/virtual-currency-thr.html](http://www.boingboing.net/2008/06/19/virtual-currency-thr.html)


by the games industry. While the commercialisation of leisure is hardly a new phenomenon [...], it seems a radical departure from the established business models of the leisure industries that the games industry not only sells entertainment products, but also capitalises on the products of the leisure derived from them.\textsuperscript{45}

Adding further contention to this issue is the nature of the audience from whom the profitable labour is being wrung, specifically, many of the players of MMORPGs are children under Canadian Law, which heavily regulates child labour – including the amount of hours such minors may work, many of which would easily be broken by the amount of unpaid labour hours put into developing characters, homes, and items in virtual worlds.

One notable case brought against a major MMO RPG provider for overextension of ownership rights is illustrated in Kopp Vs. Vivendi, a California lawsuit that was brought to restore the right of Brian Kopp to sell a guidebook on Ebay containing tips on how to play World of Warcraft effectively.\textsuperscript{46} Kopp's right to ownership of the guidebook was restored, and he was allowed to continue profiting from knowledge arising from the labour expended in playing the game. Legal issues arising from ownership of intellectual property items draw parallels to the property and ownership rights derived from Canadian Common Law. From this, we can see that legal issues in the future will seek to more easily determine ownership rights, and cases may well continue to be brought against game platform providers until such remediation is reached.

\textbf{Blurred: Criminal Law}

Perhaps an equally important obscuring of legal lines exists in the nature of criminal law and prosecution through and surrounding virtual worlds. Certainly many players, as has been suggested throughout this work, invest a considerable amount of time and labour into the health, wealth, and personal possessions of their avatars. As such, it is not unlikely that property crimes, such as theft or fraud, or crimes \textit{ad hominem} such as assault or battery, could have real monetary and psychological consequences to the real humans existing behind the eyes and bodies of the avatars in question. This becomes a contentious issue of not only jurisdiction, but of the inability to distinguish the line between where regular game play stops and criminal behaviour begins.

Criminal prosecution as a result of criminal activities occurring on the internet, such as identity theft and child pornography, is not uncommon in Canadian Law. Furthermore, criminal investigations and arrests arising from tips delivered via the internet is also not uncommon in Canadian Law. As recently as 2007, alleged internet predator Chris Forcand was apprehended by Toronto Police as a result of tips received from an anonymous group of internet users.\textsuperscript{47} \textsuperscript{48} This online criminal activity, contrary to popular portrayals in mainstream media, is not relegated to steamy chat rooms, abound with tawdry intent – quite the contrary. In worlds as generally sexually innocuous as Linden Labs' Second Life, lurid sexual exploitation of children has been uncovered and put to a halt on numerous occasions.

\textit{Child Pornography}. In 2007 an area of Second Life called “Wonderland” was discovered by Sky News of the United Kingdom\textsuperscript{49}, which prompted a wave of media coverage and eventual

\begin{itemize}
  \item \textsuperscript{45} Kucklich, Julian. 2005. FibreCulture. 5., \url{http://journal.fibreculture.org/issue5/kucklich.html}
  \item \textsuperscript{46} Kopp v. Vivendi Universal Games, et al. (3/23/2006), \url{http://www.citizen.org/documents/003-Complaint.pdf}
  \item \textsuperscript{47} The Star. December 6, 2007. “Police seek possible victims in internet luring case”. \url{http://www.thestar.com/printArticle/283256}
\end{itemize}
intervention by the FBI, and other worldwide police agencies. Wonderland was a property on Second Life, created by residents (players), which simulated a playground, and was strictly designed for the purpose of soliciting children (either real or virtual) for sex. Effectively, Wonderland was a fully operating, public child sex ring within a virtual world. Linden Lab released a statement, letting users know that the company is committed to maintaining the safety of its users, despite numerous allegations of lax policing on the company's part. Since then, Linden Lab has installed a verification system and is experimenting with tracking players’ interactions. Nevertheless British police are going undercover in Second Life to investigate depictions of adult-child sex to track down pedophiles. Users, parents and, increasingly, lawmakers are concerned that platform providers reserve the right to set the rules, to collect and utilize user data and to self-police (or not). They worry about what goes on inside virtual worlds, including virtual child pornography, sexual activity, terrorist training and bank fraud. A difficult legal question arises from this case, which is applicable to many facets of Canadian Law; what age is to be determined as legal – the age of the avatar, the player, or both? When a child avatar (pseudo-child) engages in sexual acts with an adult owner there is a criminal implication? This is a legal question that bears resolution, as numerous MMORPGs are featuring sexual content, and some – such as Sociolotron – are devoted nearly entirely to that purpose.

Harassment and hate-speech. Canada's Charter of Rights and Freedoms expressly prohibits discrimination based on “race, national or ethnic origin, colour, religion, sex, age or mental or physical disability,” and further prohibits hate-speech with a variety of amendments to the Criminal Code of Canada. While most MMORPGs include in their EULAs a provision prohibiting discrimination based on a sampling of the above identified categories, the legal issues arise not from the banning of a character as a result of violating EULA provisions to not repeatedly utter racial or sexual slurs, but on what tortious or criminal implications may be rendered by the victim of such harassment; suffice to say, a sexual harassment victim in a real-life public venue would find little respite in being reassured that the perpetrator had been “banned”.

Virtual rape. Among harassing racial and sexual slurs, and unquestionably more severe, is the more recent notion of virtual rape occurring on Second Life, reported by De Morgen Newspaper of Belgium, and covered by internet and virtual law community VirtuallyBlind.com. Allegations of rape in virtual worlds have been covered since the days of the Multi-User Dungeon (or MUD), a text based virtual world. Dibbell illustrates the virtual rape of a player of a particular MUD, in which a player was controlled by an in-game object to perform violating acts on herself and others by an offending perpetrator:

Instead, he [the offending party] entered sadistic fantasies into the "voodoo doll," a subprogram that served the not-exactly kosher purpose of attributing
actions to other characters that their users did not actually write. And thus a woman in Haverford, Pennsylvania, whose account on the MOO attached her to a character she called Moondreamer, was given the unasked-for opportunity to read the words *As if against her will, Moondreamer jabs a steak knife up her [...], causing immense joy. You hear Mr._Bungle laughing evilly in the distance.*

These actions are the type that send shockwaves through gaming communities, generally resulting in swift bannings and policies to prevent further abuse of such game mechanics. But again, the legal question arises – does the victim have the impetus to place criminal, civil, or tortious charges against the offender for such violations. The blurring here is in the very nature of the harm done – in game, the harm was perpetrated to an avatar; an unreal thing. However, the harm of reading such violent words and harassment certainly was felt by the player as well as the avatar – indeed, distributing threatening or sexually explicit letters to individuals is a criminal act in Canadian Law, the legal issue here is one of differentiation of identity, and to whom the harm was done.

**Online assault.** Finally, the question of online assault is one that is important to mention. Certainly many games are designed with player versus player (PvP) combat in mind. In many cases, PvP action forms the base mechanic for the enjoyment of the game. To this end, killing other players’ avatars is considered normal practise, and in line with the role-playing ethos of these games. In *World of Warcraft*, for example, players must choose to represent either the forces of the fictional Alliance or Horde, rival factions caught in a brutal war. This storyline facilitates player-killing, and even non-player characters will attempt to kill players of opposing factions on sight. Players in MMORPGs typically grow stronger as they play, creating discord between the power of low, new players – often called “newbies”, and their higher-level counterparts. Game mechanics are sometimes implemented to prevent high-level characters from engaging in what is called “grief play”. Lin and Sun (2007) define grief play as “behav[ing] in a disruptive or distressful manner so as to negatively affect other players' gaming experiences for the sole purpose of deriving enjoyment from their behavior.” (103). In *World of Warcraft*, grief play on the part of a high level character might include “camping” or “laming” a low-level player; that is, stalking in his or her area of play and repeatedly killing him or her so that he or she is unable to continue playing the game. At this point a convergence of two offences exists; on one hand, the character is acting out a role – the devious, vile villain of the opposing faction, Hell-bent on destroying all things good in the world of Azeroth. Contemporaneously, however, the player has stepped outside of the bounds of game mechanics; he or she is no longer playing the part of the Horde character acting out his or her duty to exterminate the Alliance, but is now engaging in the behaviour illustrated by Lin and Sun above. Blizzard calls this behaviour against the “essence”62 of the game, however, somewhat contradictory statements are made on Blizzard's support website, which reads that these actions are simply “dishonorable”63, and that Game Masters (effectively in-game police) will not intervene except in the most extreme cases. Again the legal issues become blurry; who is feeling the pain of these repeated slayings at the point beyond which game mechanics have been abandoned; the avatar, or the player?

**Privacy.** Privacy is a basic human right. Last year the United Nations celebrated the 60th anniversary of the Universal Declaration of Human Rights (UDHR). Article 18 of the UDHR states that every individual has the right to freedom of thought, conscience, and religion, whether alone or in

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62 *World of Warcraft Terms of Use.*

63 [http://us.blizzard.com/support/article.xml?articleId=20456](http://us.blizzard.com/support/article.xml?articleId=20456)
community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Article 12 in that document states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against interference or attacks. 64

From the unwitting player’s perspective, privacy should be the domain of the Internet Service Provider who should assist in managing their privacy. Unfortunately (especially for new players), the legislation absolves the ISP of any responsibility. The law actually gives intermediaries an incentive to be as little involved as possible in what goes on their web servers. 65

Three definitions or interpretations of ISP liability regulation have been classified: 1) The direct or “gatekeeper approach”; 2) the Self-Regulate / Total Immunity approach wherein the market governs itself approach, and 3) “the Limited Liability Notice and Takedown approach” the preferred approach in most jurisdictions. 66

The United States has adopted this “notice and takedown approach”, which creates incentives for ISPs to remove content without warning or evidence of actual infringement. Virtual goods in the U.S are protected under the Digital Millennium Copyright Act. Linden Lab in California offers the copyright owner assistance by providing notices to participants in a dispute or to third parties, though the privacy policy for Second Life does not protect information provided in the notices. Section 512 of the DMCA stipulates four limitations on liability for copyright infringement by online service providers based on four categories of conduct by the service provider: Transitory communications; system caching; storage of information on systems or networks at direction of users; and information location tools. 67

eBay’s user agreement states ‘Sellers may not use the eBay site to encourage others to infringe copyrights, trademarks or other rights. eBay uses a program called VeR0 to meet the safe harbor requirements in the DMCA. 68 To obtain the safe harbor, the Online Service Provider (OSP) must not have actual knowledge that the material or an activity using the material on the system or network is infringing, nor be aware of facts or circumstances from which infringing activity 69

VeR0 gives the impression that it is proactive in preventing IP infringement yet actually does nothing until there’s a complaint. 70 It seems that this is an example of intellectual property law focusing on the protection of outputs, rather the need for inputs’. 71

Ebay has initiated both take down and put back provisions in Kopp v. Vivendi when a California lawsuit was brought to restore the right of Brian Kopp to sell a guidebook on ebay containing tips on how to play the game ‘World of Warcraft’. 72

Proceed and permit. Relying on its ‘total immunity’ status73, Linden Labs encouraged a parody of their Second Life website. Rather than sending the potential infringer a cease-and-desist letter, they sent a ‘proceed-and-permit’ letter, 74 earning the praise of cyber-libertarians. 75 Though handled more

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67 Section 512 of the DMCA
68 Kopp v. Vivendi Universal Games, et al.
69 Section 512(c)(1)(A)(1)) Copyright law in Title 17 of the United States Code (Public Law No. 105-304, 112 Stat. 2860, 2877
70 Ebay’s VERO program
73 Under section 230 of the Communications Decency Act 1996.
75 Slater, D. (January 2007). The right way to respond to parody. Electronic Frontier Foundation,
conventionally, eBay also could rely on its ‘total immunity’ status.

_Cubby v CompuServe_. Concerning third party complainants, Cubby v CompuServe has become ‘a model for future decisions in court’ and a 'key defamation case’ in the US, in ruling that the ISP CompuServe was not liable for information in a newsletter it did not originally publish. Unlike Cubby, the court in Stratton v Prodigy held that Prodigy had editorial control over the messages in the ‘Money Talk’ forum and was therefore liable for the content of those messages. In Grace v. eBay, the term 'interactive computer service' in was challenged in arguing that the outcome relied substantively on Gentry v eBay, which relied on Schneider v Amazon, which in turn relied on Zeran v America Online, in which ‘an interactive computer service’ was defined as ‘a service that offers a connection to the Internet as a whole'. Similarly Grace contended that the release in the User Agreement did not relieve eBay of liability for failure to remove defamatory material after receiving notice that the material was defamatory. However, AOL in the Zeran case had already interpreted their role as ‘self-regulated’ in their business practice, and ‘total immunity’ should they be sued.

In Canada we have two legal protections for privacy - the Privacy Act and the Personal Information Protection and Electronic Documents Act (PIPEDA). The Privacy Act is meant to ensure that federal government agencies respect our privacy rights. Unfortunately the Privacy Act hasn’t been substantially revised since 1982, the year the Commodore 64 was released. Most provinces have adopted PIPEDA for matters relating to personal information in the private sector including personal information about employees. Although PIPEDA was intended to be a general and technology-neutral data protection law, a 2006 discussion paper presented a broad-brush examination of PIPEDA that included such issues as SPAM, identity theft or identity fraud, and “phishing.” However in Canada we are adopting a fourth approach – the “notice and notice”. The notice and notice system involves a notification from a copyright holder - often involving movies, software or music - claiming that a subscriber has made available or downloaded content without authorization on file sharing systems. The Internet Service Provider forwards the notification to the subscriber but takes no other action - it does not pass along the subscriber's personal information, remove the content from its system, or cancel the subscriber's service.

**CONCLUSIONS**

The authors support the widely-held view that elements of the real world and virtual worlds are beginning to blur, and offer the proposition to support the conclusion that an increasing number of people in civilized countries, and to a lesser extent people in developing countries, are learning the rules of virtual worlds. Conflicts occur in virtual worlds on a daily basis, however. While many virtual worlds employ end-user license agreements and policies such as terms of use, the question we must determine is whether the harm done is virtual or real. As we continue to look ahead, some questions

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82 Zeran v. America Online, Inc. (4th Cir. 1997) 129 F.3d 327
83 According to the classification in Edwards (2005).
come to mind.

1.) We’ve seen in this paper that real people can bring suits about virtual property or virtual acts through real courts or by other means, and real people can bring suits in the virtual world about virtual property or acts. Could an intellectual property like a player or avatar, hold its own intellectual property rights? If so could that player or avatar sue a real person for infringement, or even criminal negligence, in the real world, or virtual world? It seems unlikely for criminal virtual acts if the requirement is retained to prove mens rea.

2.) While it could be argued that a 13 year old child acting non compus mentus cannot be held accountable for his or her actions, whose responsibility (if not the ISP) is it to filter this kind of harm to players, should such harm be shown to exist? In Canada can we expect “notice and notice” to suffice?

3.) If a player or avatar’s mobility or personality could be synthesized with that of a real person’s to help the real person to function, think or learn more satisfactorily, would the creative expressions of that synthesis be attributable entirely to the real person, or would some be attributable to the owner of the avatar? Would some be ‘situated’, that is to say restricted by the platform in which they were expressed (online, offline)? Would the responsibilities of the ISP increase, or decrease?

4.) What protection is there for child labourers from profit-seeking game companies?

5.) Is the practice of money laundering of virtual currencies through online auction sites contributing to global inflation in the real world?

These are questions for another paper. As we can see, the lines between real and virtual are still hazy – as technology becomes more advanced, and advances are made in gaming technology, these lines may become nearly indiscernible. It is for this reason that a solid foundation for arbitration must be wrought out by scholars, to wrest exploitation, child abuse, and criminal behaviour.

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