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# Massively Multiplayer Online Fraud: Why the Introduction of Real World Law in a Virtual Context Is Good for Everyone

By Ethan E. White\*

## I. INTRODUCTION

¶1 A simple investment plan barely requires explanation. The concept is embedded in our common sense. For example, a person spends his or her own time working at a job. As a result of the time spent, the person earns income. In order to make this income grow, the person may choose to “make the money work” through some form of return generating investment, most commonly a bank account. The end goal of the investment is to both earn a return (in this example, interest) and the eventual refund of the principal investment. But what if the expected return is not received? Or more dramatically, what if the principal disappears and therefore cannot be refunded? Because of just such a scenario, deposits in the United States banking system are now federally protected as a proximate result of the many bank failures preceding the Great Depression.<sup>1</sup>

¶2 An investor may seek returns outside of the federally protected banking system, however, and may turn to an unprotected citizen bank. In this conception, it is an individual person (or uninsured group of individuals) that is acting as the lender instead of a federally recognized and protected bank. If the citizen banker were to abscond with the investor’s principal, the investor could likely turn to the courts for enforcement, seeking, among other possibilities, a civil cause of action in fraud.<sup>2</sup> At a minimum, the investor would be able to obtain at least some part of the principal investment.

¶3 However, the above investment scenario is centered in the real world where (in the United States at least) income for principal is earned and returns are paid in dollars. What if the income earned were not in dollars, but in gold pieces, or ISK?<sup>3</sup> In that case, you are not in the real world at all, but in a persistent online world popularly known as a Massively Multiplayer Online Game (MMOG). And while playing one of these MMOGs, you may find yourself in the misty town of Menethil Harbor<sup>4</sup> with another player offering to hold your principal gold in exchange for a daily return based on that citizen bank’s investment choices. Much like a real world investment choice, the offer

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<sup>1</sup> FDIC: Who is the FDIC?, <http://www.fdic.gov/about/learn/symbol/index.html> (last visited Nov. 5, 2006) (“[T]he FDIC was created in 1933 in response to the thousands of bank failures that occurred in the 1920s and early 1930s. Since the start of FDIC insurance on January 1, 1934, no depositor has lost a single cent of insured funds as a result of a failure.”).

<sup>2</sup> See *infra* Part V for a more complete discussion of fraud and the potential differences that might exist across state jurisdictions.

<sup>3</sup> Gold is a common currency in many online games, and ISK is the currency of the game EVE Online.

<sup>4</sup> A central harbor in Blizzard’s World of Warcraft. See World of Warcraft: World Map, <http://www.worldofwarcraft.com/info/flashmap/> (last visited Feb. 10, 2008).

may seem like a fantastic way to make your gold “work for you” because the in-game currency can often be exchanged for real-world dollars. But, much like the unscrupulous real world citizen bank, this character may disappear and take your hard-earned gold (and by association, dollars) with him.

¶4 In the real world, the duped investor can usually turn to the courts to recover the principal and punish the offender; can a MMOG player seek a similar right? The basic answer is no, according to the gaming companies, the “gods” of these persistent worlds. For the most part, the companies have taken one of two approaches. The first, a hard-line approach, refuses to recognize any player's right to in-game property and maintains all property rights are held by the company itself.<sup>5</sup> This approach thus seems to deny a cause of action. If an in-game fraud is alleged, the approach typically dictates that the game company deletes the offending accounts for violating the company's terms of use. The other approach is less drastic but still gives the player no real recourse. Under this approach, the company looks the other way, leaving the players themselves to work things out under the broad rubric of the end-user licensing agreement (EULA), the standard legal document governing participation in online worlds. Even if a fraud is alleged, the company will do nothing. This approach is demonstrated by CCP Games' reaction to a massive fraud perpetrated in their MMOG, EVE Online,<sup>6</sup> where a CCP Games executive stated that “[t]he behavior of [the perpetrator] and his [scheme] is despicable, but allowed. As long as he kept all of his work within the boundaries of the EULA, there's nothing [EVE Online creator] CCP Games will do to touch him.”<sup>7</sup>

¶5 This article argues that MMOG players should not be left without legal recourse for the simple fact that the real world result cannot be reconciled with the persistent world result. In both instances, real time and money are at stake. Therefore, when money disappears through a fraudulent investment scheme, in both instances, the victim should be able to turn to the courts for remedy.

¶6 The analysis of fraud claims in a MMOG context proceeds in six parts. Part II provides a brief discussion of the history, evolution, and business stakes for a MMOG as context for later discussion. Part III demonstrates that while currency lost may be purely in-game, it has real world value. If it has value, though, the gaming companies have maintained that the user has no right to this value. Part IV will show that numerous theories are developing to show that some form of property rights for in-game possessions is likely recognizable. Part V uses a real investment scheme from a popular MMOG to demonstrate the likelihood of a scheme occurring, and Part VI explores how the facts from this case study might fit into a common law fraud cause of action as well as possible federal criminal penalties. Lastly, Part VII argues that by allowing a cause of action, gaming companies will actually create a more efficient and profitable business model than exists in their current in-game property rights regime.

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<sup>5</sup> EVE Online End User License Agreement, <http://www.eve-online.com/pnp/eula.asp> (last visited Nov. 10, 2006).

<sup>6</sup> See *infra* notes 20–23.

<sup>7</sup> Caroline McCarthy, *Cons in the Virtual Gaming World*, C/NET NEWS.COM, Aug. 31, 2006, [http://news.com.com/Cons+in+the+virtual+gaming+world/2100-1043\\_3-6111089.html?tag=st.num](http://news.com.com/Cons+in+the+virtual+gaming+world/2100-1043_3-6111089.html?tag=st.num).

## II. MASSIVELY MULTIPLAYER ONLINE GAMING BASICS

¶7 Massively multiplayer online games have evolved from the combination of primarily two gaming genres: pen-and-paper role-playing games and networked multi-user dungeons (MUDs).<sup>8</sup> From their pen-and-paper roots, MMOGs borrow diverse variations on role-playing principles and canons from such games as *Dungeons and Dragons* (including such Tolkien-esque characters as dragons and dwarves).<sup>9</sup> From their MUD heritage, MMOGs have developed a persistent world that exists independent of the player.<sup>10</sup> Unlike many video games, the environment does not cease to exist when the player turns off the power; instead, these virtual worlds keep moving, much like the real world.<sup>11</sup> The end result is an on-going world filled with as much adventure and opportunity for success (however defined by the player) as one has time for. For the gaming business, this has also translated into big business for some industry players.<sup>12</sup> Most major games charge some form of subscription fee, typically around \$15 per month.<sup>13</sup> With player bases for popular MMOGs estimated in six to seven figures,<sup>14</sup> it is not hard to see that the market (and profit) for MMOGs is substantial.

¶8 Each of these virtual worlds has some form of economy and often more than one form. Possibly the most common type of economy is that of non-player character (NPC) merchants.<sup>15</sup> In a simple transaction, a player interacts with the programmatic merchant (thus a non-player) to exchange some in-game currency or item for something the NPC owns. This can be thought of as transacting with a vending machine, albeit one that might have a conversation with you.

¶9 A second common form of MMOG economy is that of an in-game auction. An auction exchange works very much like a real world auction, in that a seller of an item sets a price, places it in an auction house, waits for a bid from another player during the auction's duration, and then collects the proceeds from sale.<sup>16</sup>

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<sup>8</sup> See Andrew E. Jankowich, *Property and Democracy in Virtual Worlds*, 11 B.U. J. SCI. & TECH. L. 173, 175 (2005); Daniel C. Miller, *Determining Ownership in Virtual Worlds: Copyright and License Agreements*, 22 REV. LITIG. 435, 444 (2003).

<sup>9</sup> Andrew Jankowich, *EULAW: The Complex Web of Corporate Rule-Making in Virtual Worlds*, 8 TUL. J. TECH. & INTELL. PROP. 1, 40 (2006).

<sup>10</sup> Miller, *supra* note 8.

<sup>11</sup> See F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CAL. L. REV. 1, 5–6 (2004) (detailing the nature of a “persistent, dynamic” online world).

<sup>12</sup> Tor Thorsen, *VUG's 2005 Earnings WOWed*, GAME SPOT, Mar. 1, 2006, <http://www.gamespot.com/ps2/action/50centbulletproof/news.html?sid=6145154> (“VU Games [owner of World of Warcraft creator Blizzard] is back in the black, thanks to a whopping €244 million [\$289.9 million] one-year jump in earnings. Whereas the division lost [\$241 million] in 2004, it netted [\$48.9 million] in 2005. . . . The earnings report said the games group now has “a better balanced portfolio of products thanks to the tremendous on-line activity development with the exceptional success of World of Warcraft.”).

<sup>13</sup> See World of Warcraft General F.A.Q., <http://www.worldofwarcraft.com/info/faq/general.html> (last visited Nov. 5, 2006) (stating monthly World of Warcraft costs \$14.99); EVE Online Subscription Fees and Payment Options, <http://www.eve-online.com/pnp/pricing.asp> (last visited Feb. 12, 2008) (stating monthly EVE Online cost of \$14.95).

<sup>14</sup> See, e.g., Thorsen, *supra* note 12 (“Just this week [Mar. 1, 2006], Blizzard announced that WOW has exceeded six million subscribers worldwide.”); Press Release, EVE Online Reaches the 100,000 Subscriber Mark (July 7, 2006), [http://www.ccpgames.com/press/press\\_releases.asp?pressReleaseID=20](http://www.ccpgames.com/press/press_releases.asp?pressReleaseID=20).

<sup>15</sup> See, e.g., World of Warcraft Merchants, <http://www.worldofwarcraft.com/info/basics/merchants.html> (last visited Nov. 5, 2006).

<sup>16</sup> See generally Auction Houses, <http://www.worldofwarcraft.com/info/basics/auctionhouses.html> (last

¶10 The last form of economy, and that most relevant to this article, is that of player-organized investments. Much like the citizen banker previously discussed, a player may seek investment opportunities from another directly, or a player may solicit principal funds from others with the promise of a rate of return. In this scenario, the player taking invested funds acts as a bank, creating the potential risks for absconding with others' principal investments that exist in a real-world "con."<sup>17</sup>

### III. DOES A VIRTUAL LOSS EQUAL A "REAL" PROBLEM?

¶11 If a player in a MMOG were to accumulate a large amount of in-game currency (or special items) and then lose it through another player's fraudulent actions, was anything actually lost? At first glance, the action seems merely "virtual"; it is no more real than the mass murder occurring in many popular video games today.<sup>18</sup> But while it is arguable that the scheme has taken place entirely online, it does not alter the fact that real-world money is being lost, just as money squandered through an online phishing scheme is also lost.<sup>19</sup> For many MMOGs, in-game currency is directly, and quite easily, exchangeable into real world currency.

¶12 Numerous businesses have cropped up in recent years for this very purpose, providing MMOG currency exchanges to buy and sell in-game currency for real-world money.<sup>20</sup> Business in this type of exchange has reached a point where actual exchange rates can be published,<sup>21</sup> fluctuating on classic supply and demand.<sup>22</sup> Even those outside of the gaming industry have taken notice, with the popular online auction company,

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visited Nov. 7, 2006) (Sellers are able to place items up for auction, set a starting price, set the auction duration, and include a buyout price by speaking with an auctioneer. All auctions will be initially charged a deposit fee. The deposit fee is refunded upon the successful sale of the item. All successful sales are charged an auction consignment fee which is extracted directly from the final sale price.).

<sup>17</sup> See, e.g., Julian Murdoch, *612 Lawns*, GAMERS WITH JOBS, Aug. 29, 2006, <http://www.gamerswithjobs.com/node/26703> (detailing EVE Online player organized investment: "He ran the EVE Investment Bank, in which he promised a return on deposits. And he delivered. If you got in early, he paid you your return, and most likely, you reinvested."); McCarthy, *supra* note 7.

<sup>18</sup> See F. Gregory Lastowka & Dan Hunter, *Virtual Crimes*, 1 N.Y.L. SCH. L. REV. 293, 297 (2004) (arguing that under a loose "virtual crime" definition, mass murder takes place by those playing *Grand Theft Auto III*).

<sup>19</sup> Phishing schemes are emails with links to sites devised to look like a user's banking site, with additional requests to input passwords, credit card numbers, personal identification numbers, and more. The information is then used by criminals to access online account information and siphon off funds. See e.g., Anti-Phishing Working Group, *What is Phishing and Pharming?*, <http://www.antiphishing.org/> (last visited Nov. 10, 2006).

<sup>20</sup> See e.g., Player Auctions, <http://www.playerauctions.com> (last visited Nov. 10, 2006); IGE, <http://www.ige.com> (last visited Nov. 10, 2006).

<sup>21</sup> See GameUSD.com, *MMORPG Currency Price Trend Charts: First Half 2005*, July 30, 2005, <http://www.gameusd.com/news0730.htm> (graphically detailing the exchange trends for numerous MMOGs).

<sup>22</sup> Per one leading exchange site, the real world price for 100 gold pieces in the MMOG World of Warcraft (Aegwynn server, which is one of many game "instances" used to balance the load of players) was \$16.24 on 10/27/06, and \$18.06 on 11/2/06. [http://ige.com/wowus/gold/AegwynnUS/Alliance/worldofwarcraftus\\_en.html](http://ige.com/wowus/gold/AegwynnUS/Alliance/worldofwarcraftus_en.html) (last visited Nov. 10, 2006); but see Daniel Terdiman, *Virtual Gaming's Elusive Exchange Rates*, C/NET NEWS.COM, Aug. 5, 2005, [http://www.news.com/Virtual-gamings-elusive-exchange-rates/2100-1043\\_3-5820137.html](http://www.news.com/Virtual-gamings-elusive-exchange-rates/2100-1043_3-5820137.html) ("[G]etting a fair price in the exchange of real dollars for fantasy coins can be a crapshoot. Turns out it's hard to find reliable data about the dollar/virtual currency exchange rates in a pretend world where there's no Alan Greenspan.").

eBay, working to remove virtual item auctions,<sup>23</sup> and the government of Korea passing legislation to regulate the flow of virtual currency.<sup>24</sup> The exchange business has shown considerable economic maturity in the face of such opposition, as illustrated by the recent formation of trade associations<sup>25</sup> to extend influence over the Korean government's move towards regulation. Further, with the success of these secondary exchange markets, estimated at as much as \$880 million annually,<sup>26</sup> there is speculation that the demand for exchange may even outpace the growth of MMOGs (the primary market) themselves in the near term.<sup>27</sup> Perhaps more impressive than the volume of currency exchange taking place are the “big ticket” items being regularly traded. Large virtual items have been known to sell for large sums of real money, such as \$3,000 for a house in the game *Ultima Online*<sup>28</sup> or \$26,500 for an island in the game *Project Entropia*.<sup>29</sup>

#### IV. PLAYERS' RIGHTS TO IN-GAME PROPERTY

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While it seems that a significant amount of real-world dollars are being traded in the marketplace for in-game currency, players will fight a losing battle in establishing a cause of action if they cannot first show some ownership of the in-game property. Under the current regime of most game companies, players have no property rights in anything they “earn” within the MMOG, and thus they have no right to the sale or trade of the in-game property outside the confines of the game itself. The popular MMOG, *EVE Online*, takes this harsh approach one step further, attempting to contract out even the value of players' time spent in the game:

You have *no interest in the value of your time spent playing the Game*, for example, by the building up of the experience level of your character and the items your character accumulates during your time playing the Game. Your Account, and all attributes of your Account, including all corporations, actions, groups, titles and characters, and all objects, currency and items acquired, developed or delivered by or to characters as a result of play through your Accounts, *are the sole and exclusive property of CCP* [Crowd Control

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<sup>23</sup> See Posting of Zonk (12082) to Slashdot, *eBay Delisting All Auctions for Virtual Property*, <http://games.slashdot.org/article.pl?sid=07/01/26/2026257> (Jan. 26, 2007) (“Mr. Hani Durzy, speaking for eBay, explained that the decision to pull these items was due to the 'legal complexities' surrounding virtual property.”).

<sup>24</sup> See The Last Boss.com, *Korean Online Gold Farming Regulation*, (Dec. 12, 2006), <http://www.thelastboss.com/post.phtml?pk=1878> (last visited Feb. 7, 2007) (“A bill has been passed by the Ministry of Culture and Tourism in South Korea that hopes to give the government control over the exchange of virtual currencies.”).

<sup>25</sup> See Gold Farmers Form Trade Association, <http://www.raphkoster.com/2007/01/22/gold-farmers-form-trade-association/> (Jan. 22, 2007).

<sup>26</sup> Terdiman, *supra* note 22.

<sup>27</sup> IGE – Our Business, <http://ige.com/about> (last visited Nov. 11, 2006) (“Some experts believe that the market for virtual assets will overcome the primary market—projected to reach \$7 billion by 2009—within the next few years.”).

<sup>28</sup> Leslie Brooks Suzukamo, *Online Role Playing Games Gain in Popularity*, ST. PAUL PIONEER PRESS, Feb. 26, 2001.

<sup>29</sup> *Gamer Buys \$26,500 Virtual Island*, BBC NEWS, Dec. 17, 2004, <http://news.bbc.co.uk/2/hi/technology/4104731.stm>.

Productions], including any and all copyrights and intellectual property rights in or to any and all of the same, all of which are hereby expressly reserved.<sup>30</sup>

Under such an approach, whether the sale of in-game currency is worth real world money, or that the player has been tricked into the sale or investment, seems moot, because game companies assert that neither party had any right for the sale in the first place. Players in most games are ostensibly aware of the prohibition on actual ownership rights to in-game property because they are forced to view and agree (through a mouseclick) to some form of agreement button each time they log in to the game.<sup>31</sup> Because of this awareness, it would be difficult for any player to assert a justifiable reliance on any other player's representation as part of a sale, likely negating a common law fraud cause of action in the case of an investment scheme.<sup>32</sup>

¶14 But arguments do exist to support player ownership of in-game items and currency, providing the connection between the materiality of virtual currency exchange and a real-world cause of action when transactions are misrepresented. If, despite the prohibitions contained within game companies' multitude of legal documents,<sup>33</sup> a court could recognize property rights in the currency and items obtained in-game by a player, then the court might be inclined to recognize a cause of action for fraudulent sales in the virtual context. To that end, at least three theories have been advanced to advocate the recognition of such rights.

¶15 First, Joshua Fairfield<sup>34</sup> has pointed to the inherent characteristics of physical property to help identify those aspects of virtual property that deserve recognition and protection.<sup>35</sup> The first of these characteristics, rivalrousness, is observed in both in-game currency and items. Ownership of a physical object allows the exclusion of others from using that object.<sup>36</sup> While one individual physically possesses that object, it is not "possessable" by another person at that exact moment; it is, for all intents, a unique item at that time.<sup>37</sup> Unlike other digital property, such as the much discussed trade in MP3s,<sup>38</sup>

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<sup>30</sup> EVE Online End User License Agreement, <http://www.eve-online.com/pnp/eula.asp> (last visited Nov. 3, 2006) (emphasis added); *see also* World of Warcraft Terms of Use, <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited Nov. 3, 2006) (“[N]o one has the right to ‘sell’ Blizzard Entertainment’s content, except Blizzard Entertainment! So Blizzard Entertainment does not recognize any property claims outside of World of Warcraft or the purported sale, gift or trade in the ‘real world’ of anything related to World of Warcraft. Accordingly, you may not sell items for ‘real’ money or exchange items outside of World of Warcraft.”).

<sup>31</sup> Jankowich, *supra* note 9 (using the popular game Everquest as one example, “[Everquest] display[s] the license terms each time a participant enter the virtual world, giving the participant repeated opportunities to review its terms.”). Further, even without buying a game or logging in, most major game companies make the legal documents for their MMOGs available on a freely accessible website. World of Warcraft Terms of Use, *supra* note 31; EVE Online End User License Agreement, *supra* note 31; Everquest User Agreement and Software License, [http://help.station.sony.com/cgi-bin/soe.cfg/php/enduser/std\\_adp.php?p\\_faaid=16210](http://help.station.sony.com/cgi-bin/soe.cfg/php/enduser/std_adp.php?p_faaid=16210) (last visited Nov. 3, 2006).

<sup>32</sup> For the elements of common law fraud, *see, e.g.*, *Cowburn v. Leventis*, 619 S.E.2d 437, 446 (S.C. 2005); *Russ v. TRW, Inc.*, 570 N.E.2d 1076, 1083 (Ohio 1991).

<sup>33</sup> Legal documents may include terms of service, end-user license agreements, rules of conduct, and terms of use. Jankowich, *supra* note 9, at 10.

<sup>34</sup> Associate Professor, Indiana University School of Law – Bloomington.

<sup>35</sup> *See* Joshua A.T. Fairfield, *Virtual Property*, 85 B.U. L. REV. 1047, 1053–54 (2005).

<sup>36</sup> *Id.* at 1053.

<sup>37</sup> *Id.* at 1054.

<sup>38</sup> MP3 is a standard, and widely used, compression format for digital music files. *See, e.g., What is*



in-game currency and items are not “infinitely and nearly costlessly duplicable” without exploiting actual game code.<sup>39</sup> In fact, much like real-world currency or physical objects, once an exchange of a piece of this virtual property has occurred, one person holds the item while another does not.<sup>40</sup>

¶16 Second, in-game property, like real-world property, demonstrates persistence.<sup>41</sup> As previously discussed, in-game currency and items do not cease to exist when the user logs off or powers down his computer.<sup>42</sup> Indeed this persistence is the major innovation of MMOGs, in which no one ever truly wins or loses, and the environment exists independent of any single user.<sup>43</sup> In the real world, if you put a pen down and leave the room, the pen is still there.<sup>44</sup> Likewise, in-game property exists both for the player and for the online world at large whether one is logged in or not.

¶17 Lastly, in-game property shares with real-world property the characteristic of interconnectivity. In the world of an MMOG, a player riding “his” horse can be perceived by many other players as riding that horse.<sup>45</sup> The parallel to a real-world horse-rider almost goes without saying. When two people physically perceive a person riding a horse down the street, subject to the laws of physics, they perceive the same object.<sup>46</sup> This shared experience and ability to interact with an object, real or virtual, is interconnectivity.<sup>47</sup>

¶18 Virtual property, specifically in-game currency and objects, shares the traits of rivalrousness, persistence, and interconnectivity with real-world property. Game companies may argue that their insistence on user agreements explicitly barring any property rights allows them to contract around these basic characteristics.<sup>48</sup> But real-world courts place limits on the contractual ability to prevent the alienation of physical property;<sup>49</sup> therefore, if recognized as property, a similar standard should be applicable to restrictive contracts in the virtual world. Because of the shared characteristics, a real argument exists for players to assert property rights for in-game property, despite game companies’ restrictive contracts.<sup>50</sup>

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MP3?, BBC NEWS, [http://www.bbc.co.uk/webwise/askbruce/articles/video/mp3\\_1.shtml](http://www.bbc.co.uk/webwise/askbruce/articles/video/mp3_1.shtml) (last visited Feb. 9, 2008).

<sup>39</sup> Andrew D. Schwarz & Robert Bullis, *Rivalrous Consumption and the Boundaries of Copyright Law: Intellectual Property Lessons from Online Games*, 10 INTELL. PROP. L. BULL. 13, 22 (2005).

<sup>40</sup> *Id.* (noting that “[i]f [in-game property] is sold for 40,000 plat or \$31.50, the seller no longer has the [property]”).

<sup>41</sup> Fairfield, *supra* note 35, at 1054.

<sup>42</sup> Lastowka & Hunter, *supra* note 11.

<sup>43</sup> EVE Online Frequently Asked Questions, [http://www.eve-online.com/faq/faq\\_01.asp](http://www.eve-online.com/faq/faq_01.asp) (last visited Feb. 9, 2008) (defining “persistent world,” “the game world will keep evolving even when a player has gone offline, much the same way as the real world continues to evolve when you go to sleep. The game world, and anything the player may have left in it, such as undocked ships, will continue to exist and will be visible to (and possibly destroyed by) other players.”).

<sup>44</sup> Fairfield, *supra* note 35, at 1054.

<sup>45</sup> Not to mention that the player’s horse also demonstrates rivalrousness, given that only one player can ride it at a single moment.

<sup>46</sup> Fairfield, *supra* note 35, at 1054.

<sup>47</sup> *Id.*

<sup>48</sup> For an example of an agreement barring alienation, see EVE Online End User License Agreement, *supra* note 30, at 7B.

<sup>49</sup> Fairfield, *supra* note 35, at 1084.

<sup>50</sup> *Id.* at 1053.

¶19 F. Gregory Lastowka<sup>51</sup> and Dan Hunter<sup>52</sup> have both extensively written on the subject of virtual worlds and have offered further support for recognizing advanced property rights for in-game property. The authors explore how well virtual property fits within two main normative accounts of property: the “utilitarian theory of Bentham [and] the labor-desert theory of Locke.”<sup>53</sup>

¶20 Under a utilitarian theory of property, the goal is to achieve the greatest good for the greatest number of people in society, and thus society “should grant private property interests if doing so would increase overall utility.”<sup>54</sup> At first glance, it seems difficult to fathom an in-game sword or pile of gold as furthering the overall social welfare. However, in the context of the actual, real-world currency exchanged for these items,<sup>55</sup> it becomes clear that individual players of MMOGs put a very high value on in-game items. Given that the overall social good inherent in utilitarian conceptions of property is “composed simply of aggregate individual goods,”<sup>56</sup> private property rights would seem to follow from the individual utility from in-game items.<sup>57</sup>

¶21 A second, Lockean approach to property would identify private property rights as stemming from the personal labor used to create or obtain the thing itself: “the person who expended labor to render the ‘thing in nature’ into valuable form deserves to reap its value.”<sup>58</sup> While some argument has been made that the game’s programmers have truly created, and thus “expended labor to render” the virtual world,<sup>59</sup> it is the players themselves who spend countless hours gathering items and selling them in-game that leads to the creation of their own personal wealth.<sup>60</sup> Thus, while players may not lay claim to the world as a whole, a private property right may exist in their discrete possessions, which their own (often extensive) time has been spent creating.<sup>61</sup>

¶22 The United States government has not yet taken a stance on how or if virtual goods should be recognized. This has not prevented widespread speculation<sup>62</sup> that the Internal Revenue Service (IRS) may act soon to get a piece of the action by taxing the income from virtual goods. Indeed, the government of Australia has already taken the first

<sup>51</sup> Associate Professor, Rutgers School of Law.

<sup>52</sup> Associate Professor of Legal Studies and Business Ethics, Wharton School, University of Pennsylvania.

<sup>53</sup> Lastowka & Hunter, *supra* note 11, at 43 (The authors described a third normative theory: Hegel’s conception of property as an extension of personality. This conception seems less applicable to the more concrete example of fraud in virtual items, and thus is beyond the scope of this article.).

<sup>54</sup> *Id.* at 44.

<sup>55</sup> *Supra*, notes 8–9.

<sup>56</sup> Lastowka & Hunter, *supra* note 11, at 45.

<sup>57</sup> *Id.* (analogizing virtual property to “patents, the majority of which, overwhelming evidence shows, are worthless to society.”).

<sup>58</sup> *Id.* at 46.

<sup>59</sup> *Id.* at 47.

<sup>60</sup> *Id.* at 46.

<sup>61</sup> *Id.*

<sup>62</sup> See, e.g., Daniel Terdiman, *IRS Taxation of Online Game Virtual Assets Inevitable*, C/NET NEWS.COM, Dec. 3, 2006, [http://news.com.com/2100-1043\\_3-6140298.html](http://news.com.com/2100-1043_3-6140298.html); Clive Thompson, *The Virtual Taxman Cometh*, WIRED.COM, Dec. 18, 2006, <http://www.wired.com/news/columns/0,72317-0.html> (asking, “Could they tax this stuff? Is there a tax argument in favor of it? Many tax experts say yes. Bryan Camp, Professor of Law at Texas Tech University School of Law, says it would be easy for the IRS to argue that in-game profits have real-world value even when they’re locked up. . . . [[W]hen an interviewee] called the IRS’ experts on barter, they put him on hold for 15 minutes while they argued about it, then came back to say that yes, probably they would regard it as barter, if the matter ever came before them in an audit.”).

plunge into the taxing of virtual goods.<sup>63</sup> Under the IRS's historical conception of taxable gross income,<sup>64</sup> it seems entirely plausible that the proceeds from the sale, transfer, or return on virtual goods could face income tax. If so, and the IRS follows the Australian government into the virtual world, the user's property rights in their virtual goods seem to follow quite easily. For it would be difficult for the government to tax the user on something that was not legally the user's in the first place.<sup>65</sup>

¶23 While no current theory of property rights for in-game items is entirely satisfying, this does not detract from the fact that a strong argument can still be made for some adoption of private rights for this virtual property. Much like the ubiquitous "bundle of sticks" in property models, it will be the combination and evolution of many of these (and other) current practical and normative conceptions of property law that will end up defining virtual property. Much to the chagrin of MMOG players, it may in fact be the IRS's eventual taxing of virtual goods that acts as the catalyst for property rights recognition. Until that time, a sufficient framework exists even in the three theories advanced above to advocate a judicial recognition of property rights for in-game items, despite the heavy-handed contractual regimes currently adopted by game companies.

#### V. WHAT HAPPENS WHEN IN-GAME PROPERTY DISAPPEARS?

¶24 Because it can be shown that in-game items carry real-world value and that numerous persuasive arguments exist for the recognition of private property rights in these items, the next question to examine is what recourse exists when a player is conned out of his item.

¶25 From the outset, it should be noted that this article differentiates between fraud (or a "con") and outright theft of in-game items. In the vast majority of cases, theft of in-game items requires some sort of hacking or exploitation of the game world's code.<sup>66</sup> Hacking, in the context of the real world, might be the equivalent of bending the laws of space and time to acquire someone else's property. Exploits, on the other hand, might be thought of as finding an ATM that endlessly provides \$100 bills.<sup>67</sup> Because this article concentrates on causes of action that might stem from working within the confines of the MMOG's environment as coded by its creators, the alteration through hacking or exploitation of the environment's programmatic constraints is not applicable.

¶26 However, even with the scope limited to activities that take place within the "rules" defined by the environment's programmers, transactions do go wrong, and some of these "bad" transactions look a lot like real-world fraud. To create context and provide fodder

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<sup>63</sup> See Nick Miller, *Virtual World: Tax Man Cometh*, THE AGE.COM, Oct. 31, 2006, <http://www.theage.com.au/news/biztech/virtual-world-tax-man-cometh/2006/10/30/1162056925483.html> (quoting an Australian tax officer as warning, "Your income [from online games] will not be treated any differently than if you earned it working nine to five in an office.").

<sup>64</sup> See *Comm'r of Internal Revenue v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955) (famously and broadly defining gross income as including any "undeniable accessions to wealth").

<sup>65</sup> Though maybe not a "given," as the United States Treasury stated that "[i]llegal gains constitute gross income." *Treas. Reg. § 1.61-14(a)* (1993).

<sup>66</sup> For a detailed discussion of in-game theft and exploits, see Lastowka & Hunter, *supra* note 18.

<sup>67</sup> *Id.* at 315 (describing an exploit: "A quintessential example would be a 'gold dupe' where a player would, though exploiting flaws in the game code, generate duplicate currency. If a player has sufficient game accounts and machines exploiting this sort of dupe, it is possible to create so much excess gold that the virtual currency is devalued within the game.").

for exploration of a potential cause of action, a case study is helpful. The situation discussed below is very real, having occurred in August 2006, but it took place in an imaginary locale: the vastness of space depicted in CCP's EVE Online.<sup>68</sup>

¶27

EVE Online is a space simulation in which one of the main goals is to build a financial empire:

In Eve [sic], corporations are formed, engage in exploration, exploitation and extermination in the pursuit of wealth for their members....Most often these public corporations are formed to pool the capital required to purchase the blueprints for the games (sic) most powerful ships. These blueprints can then be copied and sold, generating cash for dividends. Shares can be traded on the open market, portfolios managed, speculations made.<sup>69</sup>

Under the form of a corporation, a user named Cally established what became known as the “Eve Intergalactic Bank” or EIB.<sup>70</sup> Cally advertised his EIB as a classic investment scheme, promising a stated rate of return on any deposits made into the bank.<sup>71</sup> The bank seemingly worked, with investors finding, “[h]e delivered. If you got in early, he paid you your return, and most likely, you reinvested.”<sup>72</sup> Unfortunately, despite the unreality of a distant galaxy, the end result was very much like a classic scheme familiar to American culture: “[i]t was, of course, just a Ponzi scheme. Investors were paid out of the capital from new investors.”<sup>73</sup> As with any Ponzi scheme,<sup>74</sup> the bottom would eventually fall out. Before it could however, Cally, now operating under the alias of Dentara Rast, closed down the EIB and absconded<sup>75</sup> with his investors' principal, approximately 790 billion ISK.<sup>76</sup> Assuming the amount actually taken was 790 billion ISK, and it could be liquidated all at once (thus not disrupting the demand of the market), the real world value of the fraud has been placed around \$170,000.<sup>77</sup> Even under a more

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<sup>68</sup> A massive multiplayer online roleplaying space game, <http://www.eve-online.com/> (last visited Feb. 9, 2008).

<sup>69</sup> Murdoch, *supra* note 17.

<sup>70</sup> McCarthy, *supra* note 7.

<sup>71</sup> Murdoch, *supra* note 17.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See *Cunningham v. Brown*, 261 U.S. 1, 7–10 (1924) (detailing the original Ponzi scheme perpetrated by Charles Ponzi, in which he paid promissory notes with the money of other investors in his promissory notes. By July 1, 1919, Ponzi was taking in \$1,000,000 per week but was completely insolvent. Once news broke of the scheme, investors sought to recover funds, and many found no money was left.)

<sup>75</sup> Though not without leaving a long, rambling video confession of his exploits. *Dentara Rast aka Cally Confesses to EIB Scam*, GOOGLE VIDEO U.K., <http://video.google.co.uk/videoplay?docid=-1993624284569945666&q=cally+Eve> (last visited Nov. 3, 2006).

<sup>76</sup> See, e.g., Peter Pollack, *Online “Banker” Runs Off with Cash, Avatars Cry Foul*, ARSTECHNICA, Aug. 28, 2006, <http://arstechnica.com/news.ars/post/20060828-7605.html> (amount lost reported as 790 billion); Murdoch, *supra* note 18 (amount lost reported as 700 billion); but see *Don't Bank on It!*, TENTONHAMMER.COM, Sept. 4, 2006, <http://eve.tentonhammer.com/index.php?module=ContentExpress&file=index&func=display&ceid=11&meid=32> (detailing an in-game press conference held by CCP, “CCP does not believe the amount lifted is as high as 790B; they won't speculate as to the exact amount, or even ballpark it, but it was less than 790B while still being significant enough on its own.”).

<sup>77</sup> *Don't Bank on It!*, *supra* note 76.

conservative estimate, Cally likely walked away from the EIB scandal with approximately \$80,000.<sup>78</sup>

¶28 Despite a spirited outcry from the EVE Online community, the game's creator CCP Games has declined to take any action. While calling Cally's behavior "despicable," the company concluded it was allowed.<sup>79</sup> To this point, it appears CCP Games has taken the "ostrich" approach to regulating in-game fraud, choosing to ignore the problem, as stated by the company's CEO, Magnús Bergsson, "CCP does not intervene in such cases and will only get involved if a game exploit was used, which we have not found any indication of in this case."<sup>80</sup> Despite the enormous loss of player wealth, the associated time and effort to create that in-game wealth, and potential real world money paid for in-game assets, players have been left without recourse within the game's mechanics. In the real world, a Ponzi scheme such as the EIB is subject to numerous potential causes of action, both civil and criminal. The next section will explore how those causes of action can provide a remedy to MMOG players duped in similar fashion.

#### VI. I'VE BEEN FLEECEED OF MY GOLD, WHOM CAN I SUE?

¶29 The concept of paying returns from other investors' principal is not a new idea and has been recognized in law since the time of Charles Ponzi in 1919.<sup>81</sup> However, the application of a Ponzi scheme to the MMOGs seems a relatively recent phenomenon, one which is untested in the United States' court system as yet. As demonstrated previously, though, the in-game currency lost holds real-world value and players likely have some form of private property rights in the in-game currency. Based on these elements and the facts of the Cally EIB scandal in EVE Online discussed in the last section, a real-world common law fraud cause of action likely exists.

¶30 Setting aside jurisdictional concerns that would attach to any cause of action based on the Internet's distributed architecture, the elements of civil fraud are typically identified through reference to the common law. These elements are often defined differently in minor ways across state jurisdictions, but the roots in common law are the same and thus share the same overreaching elements. The roots of common law civil fraud typically identify six elements: (1) a representation; (2) that is material to the transaction; (3) that is false and was made with knowledge of its falsity; (4) with the intent that another will rely on the representation; and, (5) that the hearer justifiably relied on the false representation; (6) which results in an injury proximately caused by the reliance.<sup>82</sup>

¶31 In the case study of Cally's EIB scam, there are sufficient anecdotal facts to support each of these elements, though perhaps not beyond a preponderance of the evidence.<sup>83</sup> First, there is little doubt that Cally made a representation to potential investors in EVE Online. His representations are what attracted investors to deposit approximately 790

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<sup>78</sup> Murdoch, *supra* note 17.

<sup>79</sup> McCarthy, *supra* note 7.

<sup>80</sup> *Id.* (quoting email from Bergsson to C/NET NEWS.COM).

<sup>81</sup> Cunningham, *supra* note 74.

<sup>82</sup> *See, e.g.,* Cowburn v. Leventis, 619 S.E.2d 437, 446 (S.C. 2005); Russ v. TRW, Inc., 570 N.E.2d 1076, 1083 (Ohio 1991).

<sup>83</sup> The purpose of this article is not to argue whether a plaintiff suing Cally for fraud would be successful, only that a plaintiff should have the right to bring such a case.

billion in in-game currency to the EIB.<sup>84</sup> Likewise, the representation is material to the transaction; but for the creation and marketing of the EIB, these investors would not have turned over billions of in-game currency to Cally and would conceivably still possess these funds. Based on both Dentara Rast's (aka Cally) message-board and video confession,<sup>85</sup> the representation of the EIB as a legitimate investment was made falsely with Cally knowing of the falsity of the scheme, as evidenced by Cally's statements that "[t]he only person involved was me. 1 Person. And that one character I used was Cally. . . . I fooled everyone. I win EVE."<sup>86</sup> Cally clearly intended others to rely on the false representation, for what is a bank, or a Ponzi scheme for that matter, without depositors.

¶32 The next element, that the individual hearing the representation rely on that representation, is more troublesome because iterations of this element often include a modifier, such as "justifiable"<sup>87</sup> or "right to."<sup>88</sup> Within the MMOG EVE Online, the game's creator has implicitly tried to establish what passes for "justifiable" reliance: "[a] scam is the act of obtaining goods from other players through misinformation, confusion, pressure or by taking advantage of basic trust. Players enter into business dealings with others at their own risk and are strongly urged to exercise good judgment and common sense when trading."<sup>89</sup> In attempting to contractually define what passes for fraud, the game's creator likely presumes too much. Just as a real-world store owner may post a sign warning "all sales final" or "buyer beware," it would be up to the fact-finder in adjudication to determine whether, and how much, that warning could impact some finding of reasonableness (or justifiability) on the part of the hearer. Further, the definition of a scam in EVE Online does not say a scam is legal or authorized, only that a player should be on the lookout for such behavior. In the MMOG context, the level of reliance on the representation that was justifiable would need to be examined on the basis of a plaintiff's specific facts, and perhaps due to embarrassment, no users taken by the EIB scheme have come forward with details of their reliance.

¶33 Some argument, based largely on the perception of virtual worlds as "games," has been raised. This argument typically proceeds by contending that being defrauded of in-game currency in an MMOG is akin to losing money in a real-world poker game (where there is no expectation of recovery), because in both cases the perpetrator is another player in a game, which condones lying.<sup>90</sup> This argument assumes too much about players' level of sophistication and understanding of what is possibly at stake when investing money with another player. As discussed, analogies to other games may go towards the reasonableness of an investor's reliance, but do not completely shut down an avenue to the cause of action. Further, with the growing complexity and involvement of

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<sup>84</sup> McCarthy, *supra* note 7.

<sup>85</sup> See Posting of Dentara Rast to <http://myeve.eve-online.com/ingameboard.asp?a=topic&threadID=381340> (Aug. 20, 2006); Rast, *supra* note 76

<sup>86</sup> Rast, *supra* note 75.

<sup>87</sup> Russ, *supra* note 82, at 1083.

<sup>88</sup> Cowburn, *supra* note 82, at 446.

<sup>89</sup> EVE Online – Frequently Asked Questions, [http://www.eve-online.com/faq/faq\\_12.asp](http://www.eve-online.com/faq/faq_12.asp) (last visited Nov. 4, 2006).

<sup>90</sup> McCarthy, *supra* note 7 (quoting post of commentator pGSX on QJ.net message-boards: "[i]t's part of the game. It would be like suing someone you lost to at poker. Stealing from people is obviously part of the game - I know that I dont [sic] even play.").

players in online worlds, it is doubtful that even the most technically illiterate court would see a MMOG as “just a game.”<sup>91</sup>

¶34 Lastly, to constitute fraud, an injury must have been proximately caused by the false representation. The injury in the EIB scandal, the collective loss of 790 billion in in-game currency, seems to directly stem from the false representations offered by the bank’s proprietor, Cally.

¶35 Despite the individualized nature of the inquiry into the fifth fraud element (that the individual hearing the false representation justifiably relied on it), the elements of common law civil fraud can arguably be met by the facts of Cally’s EIB scam. The initial reaction from gaming companies or players might be apprehension at the expansion of legal remedies into the MMOG world, but as will be demonstrated in Part VI, all sides stand to benefit from this expansion.

¶36 Briefly, because the in-game currency worth real-world dollars was fraudulently obtained by Cally during the EIB scam, there is even a possibility of criminal charges. Assuming that Cally is subject to United States jurisdiction, the scheme to defraud money would seem to fall under federal criminal wire fraud statutes, as well as the associated Racketeer Influenced and Corrupt Organizations (RICO) statutes.<sup>92</sup>

#### VII. MORE FRAUD CASES? HOW WILL THIS POSSIBLY HELP ANYONE?

¶37 Although, based on the analysis in the previous sections, it is likely a player could pursue a civil fraud cause of action against another player, it must be admitted that the company owning a particular MMOG will not sit idly by and allow the proceeding. The gaming companies’ mistaken belief that their numerous license agreements will prevent any player ownership of in-game property might encourage them to interplead in any proceeding to argue against the cause of action. The companies might also follow their heavy-handed approach taken to date: delete all accounts involved in the fraud and any account found exchanging currency out of game.<sup>93</sup> But this current dim view taken by game companies is inefficient and misses a major business opportunity for growth in MMOGs. By allowing, indeed embracing, causes of action stemming from in-game deals gone bad, the gaming companies could reap great benefits.

¶38 An in-game investment scheme, like that of Cally’s EIB in EVE Online, is nothing more than a virtual citizen bank.<sup>94</sup> These types of banks exist in the real world, but consumer trust in them is low. There is a general, common sense fear that a return too good to be true probably is, and thus investors typically seek to place their money in FDIC-insured banks. Beyond the banking insurance provided by the federal government

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<sup>91</sup> Lastowka & Hunter, *supra* note 18 (“When virtual lawsuits arise, as they inevitably will, it will not be a sufficient answer to say, ‘It’s just a game’ . . . [t]he issues are more complex than that.”).

<sup>92</sup> See 18 U.S.C.A. § 1343 (stating “Whoever . . . for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire . . . shall be [penalized.]”); 18 U.S.C.A. §1961(1)(B) (stating “‘racketeering activity’ means . . . any act which is indictable under any of the following provisions . . . section 1343 (relating to wire fraud)”).

<sup>93</sup> There are some exceptions in the MMOG world to this approach, perhaps most notably Sony (the creator of the popular MMOG Everquest and Everquest II). Sony announced plans in 2005 to run its own auction site and allow secure exchange of in-game goods for its own MMOGs. See Jankowich, *supra* note 9, at 37.

<sup>94</sup> *Supra* at notes 1–3.

though, investors have confidence they can turn to the legal system in the event of an outright fraud. While not a desirable alternative, the ability to sue someone for a fraudulent loss is available and mitigates some of the risk of private business dealing. In the same vein, the ability of sophisticated MMOG participants to turn to the legal system when in-game deals approach fraud provides confidence in these deals. Without an ability to prosecute an offender for misuse of valuable in-game property, many of these sophisticated users may shy away from the business opportunities available in-game. Thus, the more attractive the deals and the greater the ability to mitigate risk, the more likely a “corporate” player is to enter the game, to the benefit of all participants.

¶39 This corporate player can be properly thought of as a player in an MMOG that is not in-game purely for pleasure or leisure but instead as some part of a business enterprise. The corporate player could be as small as a single player<sup>95</sup> or as large as a multi-national corporation. The possibilities for in-game corporate users are truly endless. Imagine all in-game books sold through the chain Borders, in-game shoes branded by Nike and sold by a Footlocker vendor, or even in-game food branded with such ubiquitous corporations as McDonald’s or Starbucks.

¶40 There is little doubt that corporate players are chomping at the bit to enter MMOGs, as the size and breadth of the in-game population is too attractive to ignore. In Blizzard’s World of Warcraft alone, the population of monthly subscribers exceeded ten million users in early 2008, a number which only continues to grow.<sup>96</sup> Beyond pure size however, demographical measurements show the changing landscape of entertainment and the value of the MMOG audience. For example, evidence has been presented that—perhaps for the first time in video game history—females outnumber male players in online games.<sup>97</sup> Further, among many other explorations of social issues in MMOGs, Nick Yee<sup>98</sup> has shown that MMOG players spend more time online, in-game, than they do watching television.<sup>99</sup> This is truly a cultural shift and a huge marketing and sales opportunity for corporate players.

¶41 While most MMOGs have shunned the approach advocated here, one game, Linden Lab’s Second Life, has adopted just such a course of business. Second Life has embraced property rights in in-game items,<sup>100</sup> and although no cases report litigation on

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<sup>95</sup> See Camille Dodero, *Does Your Life Suck?*, METROTIMES, Aug. 23, 2006, <http://metrotimes.com/editorial/story.asp?id=9555> (In discussing a player of the MMOG Second Life, Tripper Tapioca stated, [The player] says [her product] earn[s] her between \$50,000 and \$70,000 weekly in the fluctuating fictional currency, which as of [August 15, 2006] was trading at approximately \$308 Lindens to every US dollar. On average, that grosses [the player] a real-world income of between USD \$162 and USD \$227 every seven days, the equivalent of a part-time job.).

<sup>96</sup> Press Release, World of Warcraft Reaches New Milestone: 10 Million Subscribers (Jan. 22, 2008), <http://www.blizzard.com/us/press/080122.html>.

<sup>97</sup> Candace Lombardi, *Women Outnumber Men in Online Games, Survey Finds*, C/NET NEWS.COM, Oct. 5, 2006, [http://news.com.com/2100-1043\\_3-6123172.html](http://news.com.com/2100-1043_3-6123172.html).

<sup>98</sup> A Ph.D student at Stanford University who has written several online studies exploring the social interactions and self-representations contained in virtual environments.

<sup>99</sup> Nick Yee, *MMORPG Hours vs. TV Hours, The Daedalus Project*, <http://www.nickyee.com/daedalus/archives/000891.php> (last visited Nov. 5, 2006) (finding “MMORPG gamers spend on average 21.0 hours per week playing the game . . . and spend on average 7.7 hours per week watching TV[.] The national average for TV watching per week is around 28, which is what the above averages add up to. In other words, this lends support to the claim that time that was spent watching TV has been displaced by MMORPG playing.”).

<sup>100</sup> Second Life – Terms of Service, <http://secondlife.com/corporate/tos.php> (last visited Nov. 5, 2006)



such an issue, Linden Lab's terms of service would seem to allow the fraud cause of action discussed in this article. In response, corporate players (and other, non-traditional users, such as a Federal Judge from the 7th Circuit<sup>101</sup>) have flocked to Second Life, recognizing the significant value visibility in these virtual worlds is sure to bring.<sup>102</sup> Because corporate users in Second Life know legal recourse exists when things go "bad," they are willing and moving quickly to jump into the virtual landscape.

¶42

The corporatization of any form of entertainment is often viewed with disdain by its users, and the initial reaction from MMOG is unlikely to be different. However, there is no reason that the introduction of legal remedies and the resultant corporate players should hurt the more casual users. In fact, a model exists in which non-corporate players can actually benefit from the expansion of rights advocated here. For example, game companies could take advantage of the willingness and deep pockets of corporate users to demand a higher monthly usage fee.<sup>103</sup> With a high enough fee and a critical mass of corporate users, the monthly access fee for casual users could be drastically reduced or perhaps even eliminated. The two-tier pricing model benefits all sides: reduction of subscriptions fees creates a more robust user base, game companies achieve more popularity for their individual MMOG, and corporate users obtain more eyes for their in-game promotion. Anecdotally, some MMOG users have scorned in-game advertisements, but surveys have shown that, at least in the offline gaming context, gamers actually praise the in-game advertisements as increasing a sense of realism.<sup>104</sup>

¶43

In the end, the model advocated in this note is not revolutionary. Astute readers have likely noticed the direct parallels to another popular entertainment medium: television. Completing the analogy, gaming companies become the major networks, players become the viewers, and corporate players become the advertising sponsors. The primary barrier to entry of television viewing is the cost of the television set itself. Once

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(stating "[y]ou retain copyright and other intellectual property rights with respect to Content you create in Second Life . . . Linden Lab acknowledges and agrees that, subject to the terms and conditions of this Agreement, you will retain any and all applicable copyright and other intellectual property rights with respect to any Content you create using the Service, to the extent you have such rights under applicable law.").

<sup>101</sup> See New World Notes, *Judge Richard Posner comes to Second Life*, Nov. 28, 2006, [http://nwn.blogs.com/nwn/2006/11/judge\\_richard\\_p.html](http://nwn.blogs.com/nwn/2006/11/judge_richard_p.html) (last visited Feb. 9, 2007).

<sup>102</sup> See, e.g., Mark Wallace, *Vodafone Rings up Second Life*, 3POINTD.COM, Oct. 9, 2006, <http://www.3pointd.com/20061009/vodafone-rings-up-second-life/> ("Mobile telecomms company Vodafone plans to open its own Vodafone Island in the virtual world of Second Life later this year or early next . . . [the developed in-game applications] will have the weight and marketing power of a real-world telecomms company behind them."); Noel Bussey, *Leo Burnett Opens Virtual Agency in Second Life*, BRANDREPUBLIC, Sept. 28, 2006, <http://www.brandrepublic.com/bulletins/br/article/595241/leo-burnett-opens-virtual-agency-second-life/> ("a centre where creatives can interact with colleagues from around the world working on briefs, sharing ideas and showcasing their work. . . However, the Ideas Hub could expand to offer commercial opportunities. The hub will be open to all players, including those from the client world."); Giles Whittell, *It's Life But Not As We Know It, As Web's Future Takes Shape*, American Apparel, Jul. 29, 2006, <http://www.americanapparel.net/presscenter/articles/20060729timesonline.html> (stating, "MTV has hosted fashion shows in Second Life. Major League Baseball built an entire stadium there in which to broadcast this season's Home Run Derby on miniature 'big' screens. McDonald's has opened burger restaurants in other virtual worlds. Newsweek has broadcast from a virtual studio, and Nike sells virtual sneakers that make avatars run faster.").

<sup>103</sup> As noted previously, the monthly fees for most MMOGs are around \$14.95 a month.

<sup>104</sup> Jo Twist, *Ads in Video Games Set to Rise*, BBC NEWS, Oct. 20, 2004, <http://news.bbc.co.uk/2/hi/technology/3727044.stm> ("a survey by Nielsen Interactive Entertainment found that 70% of gamers actually liked in-game product placements, saying it made games more realistic.").

purchased, the viewing (for basic channels) is free. Likewise, with enough corporate players, a casual player would only need to buy a copy of the game itself. From that point on, the monthly cost for basic play in the MMOG would be free.

### VIII. CONCLUSION

¶44 Players in MMOGs are obtaining currency and items with real world value. Theories exist, or can be constructed from existing theories, to demonstrate that players maintain some property rights in these in-game possessions, giving them the right to conduct trade and exchange both in-game and out of game. However, just as in the real world, less scrupulous individuals exist in the MMOG context and have perpetrated large scams robbing players of hard earned virtual money. When these scams do occur, there are many parallels that can be drawn to civil and criminal causes of action. Because of the opportunities existent in corporate users, game companies should embrace both property rights and any possible litigation that grows out of the MMOG context. The industry's adoption of legal recourse creates consumer confidence, attracting corporate player's advertising efforts, and with a two-tier pricing scheme, players will win with greater realism and the drop of pay-to-play mechanics.