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Virtual Worlds Collide With Real Laws

Legal experts and game players closely eye lawsuit against Second Life, which asks courts to clarify the legal status of virtual property

By Thomas Claburn, [InformationWeek](#)

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Virtual real estate entrepreneur Ailin Graef recently announced that her Second Life avatar Anshe Chung had become the first online personality with a net worth of over \$1 million, but she may be living in a fantasy world.

Linden Lab, the company that created [Second Life](#), explicitly states that Second Life residents do not own their accounts or any data on Second Life servers.

"Linden Lab retains ownership of the account and related data, regardless of intellectual property rights you may have in content you create or otherwise own," the company states in its Terms of Service agreement.

Yet the company sells the idea of ownership on its site: "Become a part of history by purchasing land and developing your own piece of Second Life," the site says. "The Pricing and Fees are simple; you pay \$9.95 a month plus a Land Use Fee proportional to the amount of land you own."

"[T]he land itself and the space and everything is owned, controlled and built by the people [in Second Life]," Linden Lab CEO Philip Rosedale said in a [July interview](#) for the AfterTV podcast.

What do cyber property magnates really own? That depends. "Some online assets, like [domain](#) names, are recognized as legal property by case law and statutes," says Rutgers law professor F. Gregory Lastowka. "The legal status of other online assets, like the virtual property in online worlds, is less clear. Even though these assets have real monetary value, they often exist only in the context of online games."

Entertainment companies rule over the virtual worlds they create like gods, imposing terms of service and end-user license agreements that give them almost unlimited power. But as commerce creeps into online worlds, the resident avatars are rebelling, forcing game creators to confront legal reality.

A lawsuit filed last May in Pennsylvania aims to clarify the legal status of virtual land. Second Life resident Marc Bragg is suing Linden Lab and Rosedale for breach of a virtual land auction contract, fraud and violations of Pennsylvania trade practice and consumer protection laws.

Bragg claims that Linden Lab froze about \$8,000 worth of virtual assets and refused to reimburse him. Linden Lab claims that Bragg acquired his Second Life property in an unsanctioned manner by taking advantage of a loophole in their code and that its actions represent an appropriate response to a Terms of Service violation. At issue is whether virtual property owners have the same rights as those with real property.

"Rosedale has been telling everyone that when you buy property in Second Life, you own the land," says Jason

Archinaco, an attorney in the commercial litigation department of White and Williams LLP who represents Bragg. "But what has happened now is they are trying to say that the Terms of Service agreement somehow modifies the statements that Rosedale is making."

As an example, Archinaco points out that owners of real property have a right to access their land. If the court finds that Bragg indeed owns Second Life land, Archinaco muses, does he get an easement that would preclude Linden from freezing his account and denying him access?

Linden Lab declined to comment for this article.

Property rights also have implications if Linden Lab were to declare bankruptcy, says Ross Dannenberg, an attorney with Banner & Witcoff, Ltd., since property owners typically have some right to recompense.

While courts generally accept the rights of entertainment companies to contractually regulate their virtual environments, contractual power is not absolute. Terms of service agreements and end-user licenses can be voided in whole or in part if they're found to be "unconscionable."

Archinaco points to a section of the End User License for Eve Online, a multiplayer science fiction game, as an overreaching document. It states, "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." ("Time" is what gamers typically say they are selling when they sell virtual items or accounts on eBay.)

Whichever way the judge rules in Bragg's case, Linden Labs stands to lose. If Linden's property seizure is allowed, the value of online land may fall and subscribers may come to resent that virtual ownership means sharecropping in reality. If Linden loses, then all the gaming companies dabbling in virtual world commerce — including Microsoft and Sony — are going to have to re-evaluate where their control of their entertainment properties ends and consumer rights begin.

It's a particularly pressing issue because micro-transactions have proven to be successful in the Asian game market and companies like Sony have been quick to recognize that paying for in-game items is potentially more lucrative than a subscription-based business model.

The irony is that the profit motive may be the industry's undoing. By adopting new business models, entertainment companies risk running up against unanticipated regulations. Second Life, for example, isn't simply a game. It functions as a currency exchange, as an [e-commerce](#) platform, and an advertising platform.

"Second Life has all kinds of issues that they've given to themselves," insists Archinaco, who believes that the company wants "to become the [portal](#) to the Internet" and compete with the likes of Google and Microsoft.

If virtual property receives legal recognition, Lastowka predicts lawsuits seeking redress for "the unlawful conversion of virtual property in a game world." While he doubts that such suits would deter the development of games designed to foster player vs. player conflict, he suggests that online fights that lead to a loss of some sort might be actionable if hacking, cheating or other exploits are involved.

While most losses in such cases would not be worth the time and expense of arbitration or litigation, Archinaco foresees a rise in class action suits that aggregate a significant number of small losses to make for substantial damage claims. He suggests that virtual conflicts might be best served by the creation of Virtual Dispute Resolution Policy and a virtual world arbitration body that functions like the Uniform Dispute Resolution Policy that governs Internet [domain name](#) disputes.

Legal recognition of virtual assets may not be all bad for game companies. It could give them a stronger hand in dealing with security violations. "[E]ven if the analogy of virtual 'theft' of virtual currency is not appropriate, game owners who are victims of commercial exploiters can point to real world economic harms created by the unauthorized access and sale of virtual currencies," Lastowka writes in an academic paper. "These harms may, in turn, give rise to criminal prosecutions for property crimes via [computer](#) trespass statutes."

While the courts appear to be reluctant to equate virtual and real property, government legislators may go where judges fear to tread. Rising awareness of the economic value of virtual assets is already drawing the interest of government regulators around the world. In October, the Congressional Joint Economic Committee (JEC) began looking into virtual economies with the stated goal of heading off hasty regulation.

"There is a concern that the IRS might step forward with regulations that start taxing transactions that occur within virtual economies," said JEC chairman Jim Saxton (R-NJ) at the time. "This, I believe, would be a mistake."

It may also be inevitable. "Every country that thinks it can regulate this is going to want to have a say," says attorney Bruce D. Sunstein, co-founder of Bromberg & Sunstein LLP. "We're in a very brave new world indeed."

