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Intellectual property and privacy in the virtual world: nowhere to hide?



Online virtual worlds have been the object of much press coverage recently and public opinion seems to be divided: some see in them an insight into our future and a new forum full of business opportunities. Others view them as mere hyped-up online video games played by people who find it difficult to interact in the real world. The fact is that the most famous of these online virtual worlds, Second Life®, now counts over 11 million registered users worldwide and its impact can no longer be ignored. From a legal point of view, virtual worlds present some interesting challenges in particular in respect of the protection of intellectual property and privacy.

Second Life®, which was launched in 2003 by San Francisco-based company Linden Labs, Inc., is one of many Massive Multiplayer Online Role Playing Games (MMORPGs). MMORPGs differ from 'traditional' video games firstly by the fact that their environment is persistent - the game does not stop when the player switches off its computer. Secondly, MMORPGs are interactive: users play an active role in the creation and definition of the virtual world in which they play. In other words, whilst in 'traditional' video games players do not have any input on the content of the game (they merely respond to it) in MMORPGs users can shape, and add to, that content, taking the game in new directions and making it evolve. Finally, as their name indicates, MMORPGs can be played simultaneously by a very large number of users. Typically tens of thousands of people interact within Second Life® simultaneously.

There are now many MMORPGs available and there is a great deal of variety in terms of the environment they offer. One common trait amongst MMORPGs is the fact users do not normally interact 'in world' under their real identity – they create an online character, known as an avatar, through which they take part in the game. The true identity of the user remains hidden to all but the game provider, assuming that the user has provided its true identity upon registering as a player.

One of the aspects of Second Life® that differentiates it from certain other MMORPGs is the fact that Linden Labs has encouraged the development of an 'in world' economy by giving its users (known as 'residents') the right to retain all intellectual property rights in the digital content they create 'in world', be it the design of their avatars, virtual clothing, script, textures, objects etc. That has given rise to business opportunities for 'in world' fashion designers, architects, automotive manufacturers etc. Transactions 'in world' are effected in the local currency, the Linden dollar (L\$) which can be exchanged against US dollars.

The enforcement of intellectual property rights in Second Life® has been the subject of much comment recently. The Terms of Service of Second Life® do contain provisions relating to intellectual property and Linden Labs is keen to state 'in world' intellectual property rights are enforceable and applicable both 'in world' and in the real world, but how does it work in practice?

In the recent US case of Eros LLC v Robert Leatherwood, a company became aware that an avatar called Volkov Catteneo had duplicated the company's 'in world' products without authorisation and sold them to other residents. As the company did not know the real identity of Catteneo (who had boasted in an 'in world' interview that the company would never find out his identity) it issued proceedings for copyright infringement Catteneo itself.

The company then applied for an injunction against ('subpoenaed') Linden Labs and PayPal for the disclosure of Catteneo's internet protocol (IP) address. It then subpoenaed the internet service provider to find out the actual billing address for the relevant internet account. Finally the Company sent a private investigator to the address and identified 19 year old Robert Leatherwood as the likely Volkov Catteneo.

That case illustrates that it is possible to enforce intellectual property right in Second Life® but the process is not straightforward. In particular, a claimant will have to convince the court to order Linden Labs to disclose the relevant information. Linden Labs are indeed unlikely to disclose any information without a court order, in accordance with their rules on the privacy of Second Life® residents. The reliability of the information disclosed by Linden Labs remains an issue: Second Life® has recently introduced a voluntary identity verification programme but it may still be difficult to know whether the information given by the resident and disclosed by Linden Labs is accurate. The claimant's best bet is thus probably to follow the company's example and seek the disclosure of the IP address and work out the individual's identity in stages. Virtual world, real life legal headache!

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