

Gwynne Monahan
Cyberlaw
12/03/2008
Final

Cooperation and Code:
Necessary Ingredients for Law in Virtual Worlds

In 2007, Toyota ran a commercial for its Tacoma pick-up truck. The commercial featured a virtual world, the massively multiplayer online role-playing game (MMORPG) created by Blizzard Entertainment known as World of Warcraft (WoW). Three animated characters, or avatars, describe their respective weapons to be used in an ensuing battle with a dragon-like monster. The third avatar says, “I’m going to equip myself with a little...uh, Four Wheels of Fury!”¹ A red Toyota Tacoma pick-up truck materializes and speeds toward the monster, with one of the avatars saying “There’s no trucks in World of Warcraft.”² The truck is promptly swallowed by the monster, and then bursts through the monster’s stomach, killing it.

Though the commercial succeeds in its entertainment value, and provides a concrete, mainstream reference to a fantasy game, it is still fantasy. In WoW, users create characters for one of two “factions:” Horde or Alliance. Both factions are made up of “races” that bare names reminiscent of J.R.R. Tolkien’s *Lord of the Rings* series, such as orcs, trolls, gnomes and dwarves.³ The game itself is

¹ YouTube website: http://www.youtube.com/watch?v=V2_ueohYRhU. Accessed 11/03/2008.

² YouTube website: http://www.youtube.com/watch?v=V2_ueohYRhU. Accessed 11/03/2008.

³ Creating a Character, World of Warcraft website: <http://www.worldofwarcraft.com/info/basics/guide.html>

centered on quests, which are “a significant tool for level advancement,”⁴ along with fighting monsters and other players. Though there is an economy, and companies such as IGE⁵ have built businesses around the buying and selling of virtual currency like WoW gold; the game itself still looks and feels like a fantasy. It is more an escape from reality than experiencing virtual reality as depicted in *The Matrix* films. There is another virtual world, however, that looks, feels and functions more like real life. That virtual world was created by Linden Lab and is known as Second Life.

Where WoW lets players accumulate experience and gold to purchase better weapons, Second Life allows its Residents to literally “build whatever they like, and become [whoever] they [want].”⁶ Many Residents choose to look like humans, though some prefer to look like winged-beings or other creates like raccoons, centaurs or anything imaginable. Using the Second Life Scripting Language and other tools provided, Residents can build vehicles such as cars, fighter jets and motorcycles. They can build weapons, and construct stores, dance clubs, resorts and offices. The Justice Center, for example, is home to the Second Life Bar Association (SLBA).⁷ The SLBA conducts monthly meetings, holds Continuing Legal Education courses and other events much like the real world American Bar Association (ABA).

⁴ Questing, World of Warcraft website:

<http://www.worldofwarcraft.com/info/basics/guide.html>. Accessed 11/03/2008.

⁵ IGE website: http://www.ige.com/wowus/gold/worldofwarcraftus_en.html. Accessed 11/03/2008.

⁶ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 51.

⁷ Second Life Bar Association website: <http://slba.info/index.html>. Accessed 11/03/2008.

Second Life also has its own currency, the Linden Dollar (L\$), which is tied to the United States Dollar (US\$), and an exchange system that allows Second Life Residents to convert L\$ to US\$ and vice-versa. Residents and non-residents alike can track the LindeX Market Data through the Second Life website.⁸ The LindeX Market helps determine such things as property values.

Property can be bought and sold in Second Life, buildings constructed and space in them rented out to individuals or groups. It is even possible to purchase private islands. The Second Life website also lists potential business opportunities, such as party planner, jewelry maker, landscaper and real estate speculator.⁹ From such businesses, and others dreamed up by Residents, it is possible to make real money, and a real living, from virtual transactions.

It is this ability to make real money from virtual world transactions that is causing the legal lamp to shine into Second Life, and illuminate a host of legal issues like vandalism, theft, property damage, land disputes, copyright and other intellectual property infringement. In virtual worlds like Second Life, such acts are known as “griefing” and conducted by “griefers.” As an article in Business Week describes, “griefers” are “online game players set out to disrupt or discomfort others through theft, cheating, harassment, or vandalism.”¹⁰ It lists well-known attacks such as the flying anatomical parts that appeared while CNET was

⁸ LindeX Market Data, Second Life website: <http://secondlife.com/whatis/economy-market.php>. Accessed 11/03/2008.

⁹ Business Opportunities, Second Life website: <http://secondlife.com/whatis/businesses.php>. Accessed 11/03/2008.

¹⁰ When Griefers Attack, Business Week Online: http://www.businessweek.com/technology/special_reports/20070416virtuallife.htm. Accessed 11/03/2008.

conducting an interview with Anshe Chung, Second Life's real estate millionaire. The Second Life Herald, an online newspaper devoted to all things Second Life, has a section called "Scammers, Griefers and Goons" that has numerous articles related to known "griefers" such as the W-Hats and Patriotic Nigras.¹¹ There are even mafias in Second Life, modeled after real world and fictional mafias, running casinos and other businesses.¹² Mafia members make collections, threaten Residents who don't pay and start wars with rival mafias. Some Residents hire mafia members for security, or to act as mediators in settling in-world disputes.

Disputes. "Griefers." These are just virtual equivalents to real world crimes. And in the real world, such crimes are often resolved through the court system. In the real world, there are laws that govern transactions, theft, property disputes, vandalism and violent acts. In Second Life, however, there currently is no virtual equivalent to real world law.

Linden Lab promotes self-governance in Second Life, encouraging Residents to file abuse reports and preferring to remain more "like a public park, with a minimum of rules."¹³ Its "minimum of rules" are known as its Community Standards that "set out six behaviors that will result in suspension or, with

¹¹ Scammers, Griefers and Goons section, Second Life Herald website: http://www.secondlifeherald.com/slh/scammers_griefers_and_goons/index.html. Accessed 11/03/2008.

¹² Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Chapter 5.

¹³ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 52.

repeated violations, expulsion from the Second Life Community.”¹⁴ These six behaviors are: intolerance, harassment, assault, disclosure, indecency and disturbing the peace. The Second Life Incident Report, posted on the Second Life website, tracks the 25 most recent violations.¹⁵ Not surprisingly, disturbing the peace is a common violation, as in parcel encroachment, often resulting in a one-day suspension.

In its Terms of Service, Linden Lab goes on to state that it has the “right but not the obligation to resolve disputes between users of Second Life.”¹⁶ Linden Lab is reluctant to get involved, unless a “Global Attack,” defined as “objects, scripts, or actions, which broadly interfere with or disrupt the Second Life community, the Second Life servers or other systems related to Second Life” occur.¹⁷ An example of a “Global Attack” occurred in 2005 the W-Hats created “a kind of virtual bomb. They had built an object that looked like an orb...and that was scripted, when triggered, to copy itself.”¹⁸ A copy made a copy, Second Life overflowed with these orbs, the servers crashed and every Resident was ejected.

The orbs, in effect, created a denial-of-service attack, affecting the “ability of [Linden Lab] servers to provide a service which people are paying [Linden Lab]

¹⁴ Second Life Community Standards: <http://secondlife.com/corporate/cs.php>

¹⁵ Second Life Incident Report: <http://secondlife.com/support/incidentreport.php>. Accessed 12/03/2008.

¹⁶ Second Life Terms of Service, Section 5.1: <http://secondlife.com/corporate/tos.php>. Accessed 11/03/2008.

¹⁷ Policies and Policing; Global Attacks. Second Life website: <http://secondlife.com/corporate/cs.php>. Accessed 11/03/2008.

¹⁸ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 98.

money.”¹⁹ Linden Lab’s response was to develop a “virtual firebreak, an impassable virtual barrier that contained outbreaks to a certain areas of the map.”²⁰ The attacks continued, however, as the group refined the scripts to counteract Linden Lab’s defenses, making them ineffective. It does not take much imagination to picture disputes between Residents escalating as one codes against the defenses of the other, and the actions rippling through Second Life, disturbing the peace.

Given the nature of Second Life, and its current lack of a legal system, it is small wonder that some Residents embrace alternative methods, such as forming vigilante groups to defend or clean up after attacks, or enlisting the help of virtual mafia members. Others, such as the Metaverse Republic, an “independent, non-profit making organisation that will provide enforceable dispute resolution to Second Life by means of a judicial system and a democratically elected Parliament”²¹ see opportunity to bring order out of chaos. The Metaverse Republic has yet to materialize, however, and there is a growing desire for the virtual equivalent of a real world legal system.

It stands to reason that Residents, who are virtual representations of flesh-and-blood people, want to transplant real world legal systems into Second Life. They are familiar with real world legal systems, understand how they work and

¹⁹ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 99.

²⁰ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 98.

²¹ FAQ, The Metaverse Republic website: <http://www.metaverserepublic.org/faq/>. Accessed 11/03/2008.

see Second Life as an opportunity to create the perfect legal system, a utopia. Proposals like that of the Metaverse Republic are attempting to create that system, as are others such as Villanova University Law School student Sarah E. Galbraith and Latham & Watkins associate Farnan M. Alemi.

Though they both propose systems that transplant familiar, real world legal systems into Second Life, complete with mediators, judges and juries, they are missing two important components: the role of code and the role of Linden Lab. As Stanford Law Professor Lawrence Lessig points out, the “possibilities of MMOG space are determined by the code – the software, or architecture, that makes MMOG what it is.”²² While Second Life lets its Residents create and destroy anything, the infrastructure to make that possible, the underlying code, is still controlled by Linden Lab. Though the W-Hats appeared to be effective in their efforts to wreak havoc on Second Life with its copying orb, Linden Lab ultimately had the ability to permanently ban the culprits from Second Life, eliminating the threat.

In her article “Second Life Strife: A Proposal for Resolution of In-World Fashion Disputes,”²³ Ms. Galbraith models her solution after three online examples: a petition system developed by LambdaMOO, one of the earliest online “worlds,”²⁴ the Internet Corporation of Assigned Names and Numbers

²² Lessig, Larry. *Code Version 2.0*. New York: Basic Books, 2006. Page 14.

²³ Galbraith, Sarah E. “Second Life Strife: A Proposal for Resolution of In-World Fashion Disputes.” 2008 B.C. Intell. Prop. & Tech. F. 090803: http://bciprf.org/index.php?option=com_content&task=view&id=44&Itemid=30. Accessed 11/03/2008.

²⁴ Galbraith, Sarah E. “Second Life Strife: A Proposal for Resolution of In-World Fashion Disputes.” 2008 B.C. Intell. Prop. & Tech. F. 090803, Section III.A.:

(ICANN) Uniform Dispute Resolution Policy (UDRP) and the “Direct Negotiation” tool, mediation services and the SquareTrade Seal Program²⁵ of SquareTrade, the largest independent warranty provider.²⁶ All three examples illustrate different modes of handling disputes that occur online. And all three examples require some form of harm to be shown, a series of criteria to be met and a third party mediator or collective agreement among all concerned parties.

Ms. Galbraith makes two suggestions: incorporate pieces of each example that makes them successful, and adjust the Second Life Terms of Service to “bind users to the process.” She then argues for a norms-based system, stating that it is a “better fit for Second Life than a strict intellectual property regime. Like the fashion industry, much of the creativity in Second Life is derivative.”²⁷ She describes a notification system where an email is sent to a pool of counselors that consists of volunteers who must adhere to strict conflict of interest policies. The counselors can “mediate between [the parties] to resolve the issue” and blacklist a user, or counselors can field requests for the “Second Life Seal of Approval” and post requests for all to see. The end result of either route is that Residents are compelled to behave because of the possibility of reputation harm

http://bciprf.org/index.php?option=com_content&task=view&id=44&Itemid=30.
Accessed 11/03/2008.

²⁵ Galbraith, Sarah E. “Second Life Strife: A Proposal for Resolution of In-World Fashion Disputes.” 2008 B.C. Intell. Prop. & Tech. F. 090803, Section III.A.:
http://bciprf.org/index.php?option=com_content&task=view&id=44&Itemid=30.
Accessed 11/03/2008.

²⁶ Learn More, SquareTrade website: <http://www.squaretrade.com/pages/learn-more-warranty-buyer>. Accessed 11/03/2008.

²⁷ Galbraith, Sarah E. “Second Life Strife: A Proposal for Resolution of In-World Fashion Disputes.” 2008 B.C. Intell. Prop. & Tech. F. 090803, Section III.B.:
http://bciprf.org/index.php?option=com_content&task=view&id=44&Itemid=30.
Accessed 11/03/2008.

due to violation of established norms, such as copying another Resident's clothing. This is akin to violating a real world social norm like stealing. Lessig states "stealing...marks you as a thief. Social norms make it so, and we live subject to these norms."²⁸ Ms. Galbraith believes social norms are already forming in Second Life, and suggest a system that works within them.

Combing the better parts of resolution systems is an admirable idea. It is not every day that a person can combine the best parts of various systems to create one better system that fits with developing social norms. However, her implementation plan is ignoring the importance of code in Second Life. It was code that created CopyBot, the example she provides on infringement, it was code that introduced CopyBot into Second Life and it was code that ultimately removed it. And it is through code that Linden Lab plans to

add data to allow residents to compare asset creators and creation time; incorporate Creative Commons licenses so creators have the option to create content that allows free copying, modification, and exchange without having to utilize outside applications; expand ban lists and reputation so residents can share information about those who abuse copyright; and, publish additional statistics on the website so creators can make rational decisions about the health and strength of Second Life's economy.

Such code implementations provide tracking and enforcement mechanisms impossible to enact in the real world. Though there are instances where dispute resolution may be necessary, such resolution needs an authentication layer to

²⁸ Lessig, Larry. *Code Version 2.0*. New York: Basic Books, 2006. Page 11.

ensure that the volunteer counselors adhere to Ms. Galbraith's proposed conflict of interest and are qualified to mediate on the issue at hand.

As Lessig has observed, "Just because an attribute has been asserted...does not mean the attribute is believed."²⁹ Ms. Galbraith's alludes to this point when she lists the "three elements of dispute resolution: convenience, trust and expertise."³⁰ If mafia boss "Marcellus Wallace" is also the lawyer "Raymond Polonsky,"³¹ the trust and expertise elements, as well as conflicts of interest, become issues. Code in the form of an authentication layer will make it possible for these three elements to be confirmed, and for the dual personalities of mafia boss "Marcellus Wallace" and the lawyer "Raymond Polonsky" to be identified. An authentication layer will also ensure that a "Second Life Seal of Approval" is exactly that, and not a scripted object disguised as a "Second Life Seal of Approval" so it can be used for nefarious purposes.

And it should be an authentication layer, not a script. Residents trying to create authenticating scripts will create a coding arms race, where those wanting a balanced system will forever be competing against those who want to thwart or destroy it. In order to create an authentication layer to be effective, both Residents and Linden Lab must work together. Cooperation will make it possible for an effective authentication layer to be developed and deployed as another

²⁹ Lessig, Larry. *Code Version 2.0*. New York: Basic Books, 2006. Page 40.

³⁰ Galbraith, Sarah E. "Second Life Strife: A Proposal for Resolution of In-World Fashion Disputes." 2008 B.C. Intell. Prop. & Tech. F. 090803, Section III.A.: http://bciprf.org/index.php?option=com_content&task=view&id=44&Itemid=30. Accessed 11/03/2008.

³¹ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 88.

tool for Residents to use as they continue to conduct business and build a Second Life, and allow Linden Lab to remain a public park.

Ms. Alemi takes a similar approach to Ms. Galbraith. In her article, “An Avatar’s Day in Court: A Proposal for Obtaining Relief and Resolving Disputes in Virtual World Games,”³² Ms. Alemi believes her system will “provide a happy medium between an avatar’s ‘legal’ rights (without having to heavily involve the real world legal system) and a deterrent mechanism (without involving the heavy-hand of a game developer restricting an avatar’s freedom to act in a virtual environment.)”³³ Ms. Alemi models her system after real world legal systems, calling for a two-tier system: the In-Game Justice System (IGJ) and the Real World Justice System (RWJ).³⁴

She describes IGJ, or Avatar v. Avatar, as starting with the filing of an online complaint that can either proceed to “In-Game Small Claims Court (IGSCC)” which is a public affair complete with judge and jury,³⁵ or the “In-Game Dispute Resolution (IDR)” which functions “very much like the real world’s ADR.

³² Alemi, Farnaz. “An Avatar’s Day in Court.” UCLA J L & Tech. 6.
http://www.lawtechjournal.com/articles/2007/06_080130_alemi.php. Accessed 11/03/2008.

³³ Alemi, Farnaz. “An Avatar’s Day in Court.” UCLA J L & Tech. 6. Section B Solution: http://www.lawtechjournal.com/articles/2007/06_080130_alemi.php. Accessed 11/03/2008.

³⁴ Alemi, Farnaz. “An Avatar’s Day in Court.” UCLA J L & Tech. 6. Section B.1 Solution: http://www.lawtechjournal.com/articles/2007/06_080130_alemi.php. Accessed 11/03/2008.

³⁵ Alemi, Farnaz. “An Avatar’s Day in Court.” UCLA J L & Tech. 6. Section B.1 Solution: http://www.lawtechjournal.com/articles/2007/06_080130_alemi.php. Accessed 11/03/2008.

The matter is private, there is no jury, and the judges' fees are higher."³⁶ She makes three suggestions for judges: current in-house counsel members of Linden Lab, Second Life "Liaisons" who currently handle disputes or possess a legal background to apply real world law to the virtual space or, in the future, popularly elected Residents. Jurors will be Residents as well, who volunteer to serve, effectively modeling the current real world system.

Ms. Alemi's second tier, the RWJ, is "a dispute resolution forum of last resort. This is where the human player is held *personally* responsible to other human players for his avatar's activities that pierce the virtual veil (PVV)."³⁷ It is meant to hold people responsible for their avatar's actions, dispelling the notion that since an avatar is a virtual being and not causing actual harm, neither the avatar nor the person behind it are liable. She says "once the human player has conducted an egregious act under the auspices of its avatar, then he has pierced the virtual veil making himself liable for the act."³⁸ She concludes by arguing that IGJ will "usher in a new form of rule: *virtual* common law," and that the RWJ offers a way to resolve disputes that happen when the line between virtual and real is blurred.

³⁶ Alemi, Farnaz. "An Avatar's Day in Court." UCLA J L & Tech. 6. Section B.1 Solution: http://www.lawtechjournal.com/articles/2007/06_080130_alemi.php. Accessed 11/03/2008.

³⁷ Alemi, Farnaz. "An Avatar's Day in Court." UCLA J L & Tech. 6. Section B.2. Solution: http://www.lawtechjournal.com/articles/2007/06_080130_alemi.php. Accessed 11/03/2008.

³⁸ Alemi, Farnaz. "An Avatar's Day in Court." UCLA J L & Tech. 6. Section B.2. Solution: http://www.lawtechjournal.com/articles/2007/06_080130_alemi.php. Accessed 11/03/2008.

Ms. Alemi's proposal is just as admirable as Ms. Golbraith's. She takes an existing real world system and adjusts it to fit into Second Life, providing a means for Residents to seek relief in-world and, in extreme circumstances, seek relief in the real world. It builds on Second Life elements that already exist, such as real world law offices that also have a Second Life virtual office, and the openness of Second Life that makes it possible for people to congregate and socialize in all kinds of places. However, her solutions, like Ms. Golbraith's, ignore the role of code in Second Life.

Ms. Alemi discusses constructing a court, which conjures images of a virtual courtroom, perhaps even a courthouse. It is entirely possible to build one in Second Life, but protecting it is another matter. Mr. Guest discovered this when he built his virtual office. His "automatic door slid open and passerby strolled in. My house had come without a manual, and it turned out I had forgotten to lock the virtual door."³⁹ Locking the virtual door is not a foolproof prevention method, however. As the book *How to Do Everything with Second Life* explains, "when you put up laser fences and turn on orbs, uninvited avatars can't get their *bodies* into your living room, but they can move their camera anywhere."⁴⁰ Residents can show up, walk in, peek in, ease drop and other activities regardless of whether or not they are invited, to say nothing of creating destructive objects. Though it is possible to limit access to spaces and buildings

³⁹ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 128.

⁴⁰ Mansfield, Richard. *How to Do Everything with Second Life*. New York: The McGraw-Hill Companies, 2008. Page 12.

by making them private or requiring a fee before entry, such functions run contrary to her proposal of an open courtroom.

The solution to this problem lies in employing the use of code. For her proposal to be effective, it is again necessary to get cooperation from Linden Lab. Linden Lab controls the servers and underlying code that makes Second Life possible. Creating security scripts or objects will lead to an arms race just like it will if creating authentication scripts. Without cooperation from Linden Lab, the courtroom and thus the resolution system will be prone to the same attacks it is trying to resolve, and perhaps even be destroyed by code, or have its virtual power revoked by Linden Lab. Such was the case with two law students, Judge Mason and Judge Churchill. “They built a virtual courtroom and opened the Second Life Superior Court.”⁴¹ It used the Community Standards as its guide, followed basic real world legal procedure like briefs and counter briefs and allowed Residents to bring complaints, large and small. There were questions about the set up, and whether or not the court had “teeth to back up its judgment.”⁴² Linden Lab answered that question by requesting “the pair to change their organization’s name, so as not to confuse [Residents] about the court’s authority.”⁴³ Without Linden Lab’s blessing, the virtual court had no authority, and never heard a case.

⁴¹ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 115.

⁴² Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 116.

⁴³ Guest, Tim. *Second Lives: A Journey Through Virtual Worlds*. New York: Random House, Inc, 2007. Page 116.

Ms. Alemi seems to have taken into account the issue of authority by proposing in-house counsel members of Linden Lab act as in-game judges. Though it does lend more credibility to the system, it has the potential of putting Linden Lab in a situation where it will have to choose one Resident over another. That is bad for business, and contrary to Linden Lab's desire to let Residents police themselves. Though she also suggests Second Life "Liaisons" who already handle disputes or have a legal background acting as judges, the same elements Ms. Galbraith raised come into play. And again, these elements can be confirmed through the development of an authentication layer.

Linden Lab helps Residents police themselves simply by providing its Residents with tools to do so. It is understandable that it does not want to be involved in policing copyright, or in mediation or arbitration where it may be forced to choose one Resident over another. Working with Residents to create an authentication layer, and a security layer for buildings such as courthouses, will allow Linden Lab to remain neutral while providing its Residents with another set of tools to better police themselves and make it possible for dispute resolution systems like those proposed by Ms. Galbraith and Ms. Alemi to be constructed, tested and, if Residents decide, a fixture of Second Life.

As virtual worlds such as Second Life continue to play an important part in social and economic development, it is increasingly important for companies like Linden Lab that operate these virtual worlds to provide these tools to Residents. It will allow Residents to feel empowered, and have confidence in their businesses, virtual selves and the system, making the promise of utopia a reality.