



**TAKE  
CONTROL**  
[www.gdconf.com](http://www.gdconf.com)

MARCH 5-9  
**2007**  
SAN FRANCISCO

MOSCONE  
CENTER

# **LEGAL RAMIFICATIONS OF USER- CREATED CONTENT IN OPEN AND CLOSED VIRTUAL WORLDS**

2007 Game Developers Conference

Moscone Convention Center

San Francisco

March 8, 2007

Sean F. Kane, Esq.

Drakeford & Kane LLC

# *Virtual World History*

**Virtual worlds – sometimes also called the Metaverse, digital or synthetic worlds – evolved from text-based role playing games such as Dungeons and Dragons.**

- **“Massively Multiplayer Online Role-playing Games” (“MMPORGs” or “MMOs”):**
  - **began in the late 70s and early 80s as Multi-User Dungeons (“MUDs”).**

# *Virtual World History*

- In the 90s MMOs began offering a real-time socially interactive component:
  - not available on traditional offline console gaming;
  - virtual characters or “Avatars” controlled and operated by real people engaged in online relationships.

# *Virtual World History*

- The three dimensional landscape of the games persist and develop whether or not any particular gamer is playing:
  - statistics state that between 20-30 million regular participants spend more time in the virtual world than in the real world;
  - US citizens make up about half of the inhabitants of the virtual world, with those from Asian countries accounting for the majority of the rest.



~~XXXX~~

# *Copyright* ©

- Copyright protection extends only to “original works of authorship” that are “fixed in any tangible medium of expression .”
- The US Constitution makes clear that the purpose of copyright protection is to promote “the Progress of Science and useful Arts”.
- Copyright protection exists as a matter of federal law. 17 U.S.C. §§ 101 *et. seq.*

# *Copyright* ©

- The protection afforded commences at the moment of creation.
- Registration of a claim to copyright is advisable and provides advantages but it is not a prerequisite to protection.
- The use of the © symbol is not required on works created after 1989.



# *Copyright* ©

- Copyright protection provides an author an exclusive right to exploit their works.
- Protection for works being created currently lasts for the life of the author plus seventy years. However, if the work is pseudonymous, anonymous or made for hire, protection extends for ninety-five years from first publication or 120 years from its creation, whichever is sooner.

# *Copyright* ©

The categories of protected works include the following:

- Literary works, including books, magazines, newspapers and computer programs;
- Musical works;
- Dramatic works;
- Pantomimes and choreographic works;
- Pictorial, graphic and sculptural works;
- Motion picture and other audiovisual works;
- Sound recordings; and
- Architectural works.





# *Copyright* ©

Doctrine of “fair use” creates a limited right to utilize copyrighted material without the owners consent. In order to determine if “fair use” exists must determine the following:

- is the use commercial in nature or for nonprofit educational purposes;
- the nature of the copyrighted works;
- the amount used in relation to the copyrighted work;
- the effect of the use on the potential market or value of the copyrighted material.

# *Copyright* ©

- A Derivative Work is “a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed or adapted.”
- Derivative works can be copyrightable if they meet a “minimal creativity” standard and are not merely trivial and lacking in originality.

# *Trademark* ®

A Trademark may include any word, name, symbol or device (or combination thereof) actually used by a person in commerce, or which the person has a bona fide intention to use, to identify and distinguish his or her goods from those manufactured or marketed by others and to indicate the source of the goods, even if that source is unknown.

# *Trademark* ®

- Trademark protection exists as a matter of federal law, 15 U.S.C. §§ 1127 *et. seq.*, as well as various state laws and common law.



# *Trademark* ®

In assessing the strength of a Trademark, four factors are viewed:

- 1) Whether the mark is generic (automobile for cars);
- 2) Whether the mark is descriptive;
- 3) Whether the mark is suggestive;
- 4) Whether the mark is arbitrary or fanciful.

# *Trademark* ®

Descriptive Mark (protection can be obtained once secondary meaning is achieved)



® is a registered trademark of The HoneyBaked Ham Co.

# *Trademark* ®

## Suggestive Mark



® is a registered trademark of Citigroup, Inc.

# *Trademark* ®

Arbitrary or Fanciful Mark



® is a registered trademark of Apple Computers Inc.

# *Trademark* ®

Trademarks can take a variety of forms:

- design can be a trademark;
- product shape can be a trademark;
- number can be a trademark;
- slogan can be a trademark; and
- sound or smell can be a trademark.

## *Trademark* ®

Dilution is when one party trades on the Goodwill of another party, even when no intent to do so exists. Dilution occurs when, notwithstanding the absence of competition between the parties or absence of confusion as to the source of the goods, a famous mark is used in commerce by another entity.

# *EULAs & the Closed World*

- Each virtual world comes with an End User License Agreement.
  - drafted by the designers and their lawyers to control and curtail antisocial behavior;
  - EULA acts like a system of laws for the virtual world creating a “closed world”; and
  - this “closed world” is intended to differentiate the virtual world as a game not part of or subject to the real world laws.

# *EULAs & the Closed World*

- EULAs generally provides for no sense of private property since the virtual world is wholly owned by the MMO designers and builders.
  - the players may accumulate monies or property but merely use them by license of the game developer;
  - if EULA controls then no need for real world law enforcement in the virtual world.



# *Closed vs. Open Worlds*

- “Open worlds” have been designed where the barrier between the real world and the virtual world is much more porous.
  - individual players retain ownership of real world rights in their creations in the virtual world;
  - up to 80 percent of the content in some MMOs has been created by the users.



# *Virtual Economy*

- Property, both real and personal, can be purchased or created.
- A secondary market has arisen on eBay and other similar websites.
  - yearly transactions of approximately \$1,000,000,000 and growing.

# *Virtual Economy*

- Individuals and virtual businesspeople are able to convert their digital earning into real cash.
  - originally by using eBay<sup>®</sup> and other online auction websites;
  - the advent of virtual currency arbitrage trading allows for conversions to be made at the then prevailing rate.

# *From Virtual Currency to Hard Currency*

- Individuals can create virtual money by the offering of virtual goods or services and, therefore, is much like a real world society.
  - Jon Jacobs spent \$100,000.00 to purchase a digital space station in the game *Entropia Universe*.
  - Ailin Graef (A.K.A Anshe Chung) is referred to by some as the virtual Donald Trump.

# *Virtual Crimes*

- Earliest examples of a purported virtual crime occurred in 1993.
- It was a real-time non-consensual written description of the rape of an Avatar:
  - however, the elements of a physical rape were not present and the author's textual description would have been protected by the first amendment free speech rights.

# *Virtual Crimes*

- Virtual Theft;
- Virtual Stalking;
- Virtual Murder;
- Virtual White Collar Crimes;
- Etc.

# *Virtual Financial Crimes*

INTERPOL defines virtual money as follows:

“[A]s money value as represented by a claim on the issuer which is stored on an electronic device and accepted as a means of payment by persons other than the issuer. Virtual money is an encrypted code representing money, in the same way that paper money is only paper bearing certain characteristics such as graphics and serial numbers.”



# *Virtual Financial Crimes*

There are two distinct types of virtual money:

*Identified virtual money* – contains information revealing the identity of the person who originally withdrew the money from the bank. This can be traced through the economy, by the bank or law enforcement personnel;

*Anonymous virtual money* (also known as digital cash) - once it is withdrawn from an account, it can be spent or given away without leaving a transaction trail. Using blind signatures rather than non-blind signatures creates anonymous e-money.

# *Virtual Financial Crimes*

A discussion on the INTERPOL Website includes the following:

“Online games now have their own foreign exchange which lets players buy and sell different virtual currencies, just as in the real world. Criminals will undoubtedly take advantage of this.”

([www.interpol.int/public/TechnologyCrime/CrimePrev/VirtualMoney.asp](http://www.interpol.int/public/TechnologyCrime/CrimePrev/VirtualMoney.asp))

# ***Virtual Financial Crimes***

- **Given the ability to pass virtual money from person to person without any reporting requirements or electronic trail there is the potential for various unscrupulous or illegal abuses of the virtual monetary systems:**
  - unauthorized creation, transfer or redemption of virtual money;
  - utilizing a virtual market to mask the holder or value of virtual funds; and
  - criminal attacks on virtual money systems, leading to loss of virtual money value or loss of function of the virtual money system.

# *Virtual Financial Crimes*

## *Virtual Asset Creation and Seclusion*

- As discussed, the value of transactions which occurred in the various MMPORGs last year tops the one billion dollar mark.
  - since this does not include IP assets not traded or monetized the actual value of the assets in the virtual world is potentially astronomical;
  - currently, MMPORGs are under no obligation to track and report to the government the nature or amounts of transactions or assets;
  - since most assets are connected to an Avatar, the actual real owner of the assets is given protection from disclosure.

# *Virtual Financial Crimes*

## *Virtual Asset Creation and Seclusion*

- The potential for illegally secluding assets in the virtual world also exists.
  - since their inception certain MMPORGs have allowed for players to add monies to their online accounts;
  - therefore, it possible not only to create assets that the government is not aware of, but also to move real world assets into the virtual world.

# *Virtual Financial Crimes*

## *Virtual Money Cyberlaundering*

- Traditional money laundering involves significant physical effort:
  - must conceal the existence and source of the funds and then disguise the monies to make it appear legitimate;
  - physically move the hard currency while avoiding attention.
- Initially this was very low tech:
  - transporting monies out of the country to regions with less strict banking regulations:
  - making multiple deposits under the \$10,000.00 reporting threshold.

# *Virtual Financial Crimes*

## *Virtual Money Cyberlaundering*

- Electronic funds transfers or wire transfers became the favored means:
  - it provides a swift and nearly risk free conduit for moving money;
  - involved the use of “identified virtual money” so there was still a certain ability to track the source and recipient of the funds.

# *Virtual Financial Crimes*

## *Virtual Money Cyberlaundering*

- Electronic cash, or digital money, is virtual world replacement for hard currency. Once it is removed from an account it can be transferred or given to any other party without leaving a trail, electronic or otherwise.
  - since *Entropia Universe's* accounts are likely non-FDIC insured they presumably lack federal regulation, including compliance with the filing regulations contained within the Money Laundering Control Act of 1986;
  - the digital transfer of potentially significant sums can be done quickly and without the requirement of being reported to any regulatory or investigative agency.



# *Virtual Financial Crimes*

## *Virtual Monetary System Attacks*

- The US has not faced this problem yet but other countries have. In South Korea two individuals manipulated a virtual world server to create virtual currency worth over \$1 million dollars.
  - merely a computer hacking crime or it is tantamount to counterfeiting;
  - counterfeit virtual money can act to deflate the rest of the virtual world economy;
  - if more monies are wrongfully inserted into the system than the gaming company can cover as real world withdrawals, could cause “a run on the bank”.

# Thank You

## Sean F. Kane, Esq.

Drakeford & Kane, LLC  
475 Park Avenue South, 15<sup>th</sup> Floor  
New York, New York 10016  
Tel: (212) 696-0010  
Fax: (212) 696-0070  
Email: [skane@drakefordkane.com](mailto:skane@drakefordkane.com)