Chapter 5
Virtual Property in Virtual Worlds

"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thing power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulge, it forces itself into the possession of everyone, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He, who receives an idea from me, receives instruction himself without lessening mine; as he who lights his tape at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density at any point, and like the air in which we breathe, move and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property."
— Thomas Jefferson, 1813

INTRODUCTION

Digital technology is detaching information from the physical plane, where property law of all sorts has always found definition. Throughout the history of intellectual property law, the proprietary assertions of thinkers and inventors have been focused not on their ideas, but on the expression of those ideas. The ideas themselves, as well as facts about the phenomena of the world, were considered to be the collective property of humanity. One could claim franchise, in the case of copyright, on the precise turn of phrase used to convey a particular idea or the order in which facts were presented. Law protected expression. To express was to make physical. One did not get paid for the idea but for the ability to deliver it into reality. The value was in the conveyance and not the thought conveyed. In other words, the bottle was protected, not the wine. (Barlow, 2004)

In the realm of virtual reality, a similar situation is occurring. Many “objects” are being created in worlds that are owned and operated by large corporations who own the underlying code which enables “objects” to be created. In other words, the code is
the bottle and the “objects” are the wine. A virtual object is given its meaning at the level of code, even if that meaning is only fully realized in the context of the environment. Divorcing anything from its necessary context (i.e., music without anything to play it) creates an illusion of non-existence. It is the context of virtual worlds that give virtual property its existence, and successful legal protection of virtual property depends on careful consideration of this context. The virtual world interface and the virtual property rely on each other, but their co-dependence does not make them less “real” unless one or the other ceases to exist at the code level. So long as there is careful delineation as to how far virtual property rights extend, many of the problems raised by virtual property’s uniquely digital nature may be avoided. Hence, both the bottle and the wine may be protected.

A. THE ACQUISITION OF VIRTUAL PROPERTY

A quick review of how one acquires virtual property might be useful, because everything your avatar will need costs money. (Salem & Zimmerman, 2004; Bartle, 2004) Not only will you have to furnish your avatar’s tables, chairs, grape arbour and a toilet, but all of the objects and chattels in your place are subject to wear and tear. If you want to keep attracting guests, you will have to refresh the buffet, unblock the toilet, and fix the broken pool table. All of these services have a price. Property in today’s virtual worlds is not confined to virtual realty. Houses are merely one aspect along with weapons, suits of armour, pig iron, lumber, tables, chairs, plants, magic scrolls; or any other virtual item a virtual character of Britannia might want or need which can be bought at auction. A pair of sandals starts at $5; an exceptionally badass battle-axe goes for $150; and a well-located fortress would be priced at about $1,200. (Dibbell, 2003) A simple calculation puts the total of these transactions at approximately $3 million per year. (Castronova, 2002)

Still you want to acquire a home to your avatar. There are a few ways to go about this. The first way involves spending about 40,000 gold coins and receiving a small house property deed, which is essentially a building permit. (Dibbell, 2003) Building a truly appealing home or tavern requires one to purchase walls, windows, and perhaps a pool table, all of which cost quite a lot of simoleons. One must spend time and effort to build up enough online wealth to afford the materials. To do this, one could try killing monsters with your weapons, a risky and uncertain prospect. Or one could become a skilled labourer, like a blacksmith. This means sitting in front of the computer clicking on iron ore deposits, carting them back to a forge, and knocking out breastplate after breastplate. If you do this for days on end, you will eventually accumulate enough of the local currency to afford to build your first hut. In addition to this ‘click-slavery’ of toiling over a virtual red-hot forge, you will need to pay real money - between ten and thirteen U.S. dollars - month after month for a subscription charge to the virtual world of your choice. (Dibbell, 2003) This is known as ‘click slavery’ because you are slaving over your mouse for hours and hours in a mind numbing fashion.

This method assumes that the best way of obtaining something is going to the place where it is made and then building it yourself. By analogy, consider the choice faced by a Briton in search of a Javanese totem or Incan blanket. She could travel to those places, study the art of making totems and blankets, and after years of toil produce her heart’s desire with her own hands. Most people would regard this as insanity. (Lastowka & Hunter, 2004) Alternatively, one can buy a completed tavern, built by property speculators who, like their real-world counterparts who buy prime land early, throw up an anodyne house that appeal to a broad range of would-be owners, and sell it off. (Planet Modz Gaming Network)