

Contents

Acknowledgments xiii

About the Author xv

Chapter 1

Introducing Virtual Worlds and Virtual Law . . . 1

What Are Virtual Worlds? 1

What Do You Call “Virtual Worlds”? 4

What Kinds of Virtual Worlds and Games Exist? . 5

What Is an Avatar and How Do I Get One? 7

What Should I Expect in a Virtual World? 11

How Do People Use Virtual Worlds? 12

How Do Companies Use Virtual Worlds? 13

What Is Virtual Law? 14

Open Questions on the Future of Virtual Law . . . 16

Notes 16

Chapter 2***Big Picture Questions in Virtual Law 19***

Augmentationists, Immersionists, and Experimentalists	19
Rights for Players, Users, and Avatars	23
End User License Agreements and Terms of Service	27
Choice of Forum, Choice of Law, and Arbitration Clauses . . .	30
Virtual Currency	34
Open Questions on the Big Picture of Virtual Law	41
Notes	41

Chapter 3***Evidence and Virtual Worlds 45***

Virtual World and Game Hosts as Data Providers	45
Chat and User Activity Logs	47
Other Sources of Evidence in Virtual Worlds	52
The Reliability of Evidence Collected in a Virtual World	52
Future Authentication of Documents in a Virtual World	54
Open Questions on Evidence Collection in Virtual Worlds . . .	55
Notes	56

Chapter 4***Governance of Virtual Worlds 57***

Johan Huizinga's "Magic Circle"	58
The Intellectual Argument Against Real-World Governance .	59
The Emotional Argument Against Real-World Governance ..	60
Who Really Governs Virtual Worlds and Games?	64
How Questions of Governance Will Reach the Courts	71
The "Magic Circle Test" and Governance	74

Open Questions on Governance in Virtual Worlds	77
Notes	77

Chapter 5

<i>Property Law and Virtual Worlds.</i>	79
---	----

A Short History of Virtual Property	82
What Is Virtual Property?	86
The Red Herring of "Value"	87
The Argument Against Recognizing Virtual Property	90
The Argument for Recognizing Virtual Property	92
Reconciling the Arguments—How Virtual Property Will Come into Being	96
What Will Happen When Virtual Property Comes into Being?	100
Ownership of Currency	104
Ownership of Virtual Land	104
Practical Arguments Regarding Virtual Property	106
Closing Thoughts Regarding Virtual Property	114
Open Questions on Virtual Property	114
Notes	115

Chapter 6

<i>Contract Law and Virtual Worlds.</i>	117
---	-----

Contracts Between Users and Virtual World Providers	117
Disputes Regarding Contracts Between Users and Virtual World Providers	123
Using Contracts to Govern the Relationship Between Users in Virtual Worlds	129
Third-Party Beneficiary Enforcement	132
Contracts Between Users in Virtual Worlds	135

Open Questions on Contracts in Virtual Worlds.	137
Notes	138

Chapter 7

<i>Intellectual Property Law and Virtual Worlds.</i>	<i>139</i>
--	------------

History of Intellectual Property and Virtual Worlds	140
Terms of Service and End User License Agreements	141
Enforcement of Intellectual Property Rights in a Virtual World	145
Copyright Law and Virtual Worlds	146
Trademark Law and Virtual Worlds	149
Patent Law and Virtual Worlds	153
Trade Secret Law and Virtual Worlds	157
Right of Publicity and Virtual Worlds	158
Open Questions on Intellectual Property Law and Virtual Worlds.	162
Notes	162

Chapter 8

<i>Civil Procedure and Virtual Worlds</i>	<i>165</i>
---	------------

Suing Fictitious Defendants Generally	166
Suing Pseudonymous Internet Users	167
Suing Pseudonymous Avatars	170
Serving Documents on Avatars	173
Open Questions on Civil Procedure and Virtual Worlds	174
Notes	174

Chapter 9

<i>Tort Law and Virtual Worlds</i>	<i>177</i>
--	------------

The Magic Circle and the Limits of Tort Law in Virtual Spaces.	178
---	-----

Limitations on Touch-Based Torts Arising from Virtual Worlds	179
Limitations on Property-Based Torts Arising from Virtual Worlds	180
Business Torts Arising from Virtual Worlds	182
Defamation in Virtual Worlds	182
Intentional Infliction of Emotional Distress in Virtual Worlds	186
Open Questions on Tort Law and Virtual Worlds	193
Notes	194

Chapter 10

<i>Criminal Law and Virtual Worlds</i>	<i>197</i>
--	------------

Reluctance of Prosecutors to Bring Charges for Crimes in Virtual Worlds	198
Financial Fraud in Virtual Worlds	200
Virtual Worlds as Terrorism Simulators	204
Stalking in Virtual Worlds	204
Gambling in Virtual Worlds	205
Sexual Ageplay and Virtual Child Pornography	205
Virtual Prostitution	206
Open Questions on Criminal Law and Virtual Worlds	207
Notes	207

Chapter 11

<i>Privacy Law and Virtual Worlds</i>	<i>211</i>
---	------------

Threats to Privacy in Virtual Worlds	212
Technological Tools and Invasions of Privacy	214
Open Questions on Privacy Law and Virtual Worlds	215
Notes	216

Chapter 12***Securities Law and Virtual Worlds 217***

Virtual World Market Activity 217

Do Real-World Securities Laws Apply to In-World Activity? . 219

Open Questions on Securities Law and Virtual
Worlds 223

Notes 223

Chapter 13***Tax Law and Virtual Worlds 225***

What Is Virtual Currency? 225

Tax Law Basics 232

Taxing Income from Virtual Worlds and Games 233

Open Questions on Tax Law and Virtual Worlds 240

Notes 240

Chapter 14***Establishing a Professional Virtual World Presence 243***

Why Legal Professionals Should Establish Virtual
World Presences Now 245

Client Development in a Virtual World 246

Can Lawyers Actually Practice Law in a Virtual World? 249

Cost of Participation in a Virtual World 250

Time Required to Participate in a Virtual World 252

What Should a Professional's Avatar Look Like? 253

What Kind of Virtual Office Should a
Professional Have? 255Addressing the Pitfalls Professionals May
Face in Virtual Worlds 257

The Downside to Being an Early Adopter.....	257
Ethical Concerns in Virtual Worlds	258
Virtual World Hassles	259
Closing Thoughts	260
Open Questions on Establishing a Professional Virtual World Presence	261
Note	261

Appendix I	
<i>Directory of Virtual Worlds, Games, and Platforms</i>	<i>263</i>

Appendix II	
<i>Second Life’s “Galileo Law Directory”</i>	<i>267</i>

Appendix III	
<i>Virtual Law Resources on the Web</i>	<i>295</i>

Appendix IV	
<i>Second Life Terms of Service</i>	<i>297</i>

Appendix V	
<i>World of Warcraft Terms of Use Agreement</i>	<i>319</i>

Appendix VI	
<i>Entropia Universe End User License Agreement.....</i>	<i>335</i>

Appendix VII	
<i>Raph Koster’s Declaration of the Rights of Avatars</i>	<i>351</i>

Appendix VIII

Eros, LLC v. John Doe *Complaint* 357

Appendix IX

Memorandum and Order Denying Motion to Dismiss
(Bragg v. Linden) 365

Appendix X

Hernandez v. IGE *Complaint* 395

Appendix XI

Eros, LLC et al v. Simon *Complaint*. 423

Index 443