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## **News**

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### **Conferences**

#### **Free of Legal Regulation, Virtual Games May Create Legal Troubles, Lawyers Warn**

SAN FRANCISCO--Though players' movements and interactions in virtual games are limited to the online realm, their transactions may intersect more closely with the "real" world than either they or lawmakers realize, a panel of high-tech lawyers suggested Aug. 11 at the American Bar Association's annual meeting.

The lawyers, speaking at the ABA Section of Science and Technology Law's "Virtual Law: How Online Games are Shaping Legal Rules" presentation, suggested ways in which virtual transactions implicate "real world" intellectual property issues, financial laws and regulations, and consumer protections.

#### **Quasi-Economy, Sans Regulation**

Sean Kane, founding partner with Drakeford & Kane in New York, kicked off discussion with an explanation of today's virtual games as an independent, user-generated quasi-economy.

Unlike online games of the past, which have largely been tied to consoles with fixed parameters, today's virtual worlds are real time social networks and interactive platforms, Kane said. Players create digital representations of themselves, called avatars, which they use to interact with other players and with their virtual environments.

Kane said that up to 80 percent of the content in virtual games is user-generated. Through their avatars, players buy and sell virtual real estate, create virtual businesses, and engage in virtual commerce. Virtual games such as Linden Labs' "Second Life" are "open worlds," Kane explained. The players own the rights to their own creations, and they are free to sell and trade virtual properties as well as virtual identities.

Such sales, however, are not limited to the game world. They often occur in a tangible, real world market place. Moreover, even sales that happen within a virtual world can have real world consequences: most virtual currency can be, and often is, converted into cash. Kane offered Second Life as an example, quoting the current conversion rate between "Linden Dollars," the game's currency, and U.S. dollars.

"Since intangible intellectual property of all kinds has real-world value and can be relatively easily converted, the question arises as to what legal standard should be applied to the virtual world," Kane said. "Virtual games are no longer exclusively virtual."

The problem comes with regulation, Kane continued. He suggested that once the virtual worlds and real worlds start converging, the possibility of virtual games becoming something of a shelter from outside law becomes increasingly real. Money made in virtual worlds is not taxed, nor is it accounted for by any agency or entity. Banking regulations similarly do not apply to virtual currency--they only kick in once the money is converted.

Kane said he worries that virtual games may facilitate the illegal seclusion of assets, allowing for undetected money laundering. Kane also questioned the stability of the virtual currency system to handle the estimated billions of U.S. dollars coursing through it. Three problems may arise, he said:

- the possibility of unauthorized creation, transfer, or redemption of virtual money;
- the potential to use a virtual market to mask the holder or value of virtual funds; and
- the possibility of criminal attacks on virtual money systems, leading to a loss of virtual money value or function of the virtual money systems.

### **Virtual Gambling Loophole?**

Virtual money won and lost in virtual world casinos, and in avatar betting, may also prove troubling for law makers. Samir Jain, co-chair of Wilmer Cutler Pickering Hale & Dorr's Internet, E-Commerce & New Media group, explained that online gambling laws may, or at least should, apply to virtual worlds.

The Unlawful Internet Gambling Enforcement Act, 31 U.S.C. §5631, requires, among other things, that payment systems be able to identify and prohibit payments to unlawful online gambling operations. The act is primarily targeted to credit cards with a U.S. presence, Jain said; it is designed to be a chokepoint. But when bets are made with Linden Dollars and converted to U.S. dollars after the fact, the chokepoint all but disappears, Jain said.

Additionally, Jain cited the act's trigger--unlawful gambling--as problematic. "There are no laws governing virtual games. Who's to say what is legal, and what is not?"

Jain said that Linden Labs has recently banned betting on real world sporting events in the virtual realm, which he called "an acknowledgement of the problem."

"It's a step, but it begs the question: What's the risk?" Jain asked. "If Linden is already regulating this, it must be worried about its own liability," he said. As virtual worlds continue to expand, Jain said that players may soon find a way to structure betting around wholly virtual interactions, which would circumvent the Linden ban.

"We're only starting to see the possible development here," Jain said. "We need, as lawyers, to stay one step ahead when we think about implications in existing law."

### **Laws of Questionable Applicability**

Keith Fentonmiller, senior attorney with the Federal Trade Commission's Division of Advertising Practices, directed his comments to consumer protection and advertising rules, especially rules protecting children.

The FTC has issued multiple regulations over the past decade limiting the sale of and rating for console-based video games, but as Fentonmiller explained, the agency is not meeting the same successes in the virtual world.

It is difficult to regulate consumer-generated content both because it adapts and evolves so quickly, and because it often implicates First Amendment values, Fentonmiller said. However, virtual worlds carry the same risks as video games, Fentonmiller said.

"In virtual worlds, the content is not fixed, and it's very, very hard to assign it a rating. It's hard to regulate for the same reason," Fentonmiller said. He cautioned that virtual worlds can be violent places for children, and he said the commission urges parents to be involved with their children's online activities.

Fentonmiller also identified in-game advertising as potentially problematic. Virtual worlds commonly encompass virtual billboards, virtual sponsorships, and virtual logos--all of which advertise real-world products.

"We do not have jurisdiction over what goes on in virtual games," Fentonmiller said. "But shouldn't there still be regulations of ads that are deceptive and unfair? What about ads for alcohol, or cigarettes, or junk food in virtual games targeted to children?"

The FTC, as Fentonmiller explained, has a mission to protect the consumer. Protecting those consumers' online identities raises a new, as yet unanswered, set of questions, he said.

Fentonmiller advocated more meaningful standards in virtual worlds, and said that the FTC would likely step in "if appropriate."

The Section of Science and Technology is forming a virtual law committee, and is currently soliciting members and input from interested parties.

*Additional information about the Science and Technology Section's work in virtual law, including information on joining the virtual law committee, is available, through the American Bar Association, at <http://www.abanet.org/scitech/>.*

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