

Takahashi: Tracking criminals in virtual worlds

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I've been wondering what would happen if there were drug dealers or terrorists lurking in virtual worlds such as Second Life. If the FBI or National Security Agency wanted to place wiretaps on conversations in those worlds, would they be able to do it? And if they did record conversations in virtual worlds, could the people spied upon escape prosecution by saying that they were only pretending to be terrorists or drug dealers?

My interest is theoretical at the moment. Interpol has said there are criminal elements operating in virtual worlds, but let's not panic. There is enough fear-mongering out there about all the trouble we can get into online.

But this topic is a persistent one at conferences such as Virtual Worlds, which drew more than a thousand people to San Jose last week.

Under current laws, the authorities can't conduct fishing expeditions. They can't order companies to incur huge expenses building eavesdropping systems in the virtual worlds that would make it easy to reclaim conversations from a long time ago, said Jim Dempsey, policy director of the civil liberties group Center for Democracy and Technology in Washington, D.C.

In other words, the government can't ransack an entire virtual town just to find one possible drug dealer. The Fourth Amendment protections against unreasonable search and seizures hold true in cyberspace as they do in the real world.

Still, much remains murky. Michael Wilson, CEO of Makena Technologies (owner of the virtual world There.com), told me there isn't a legal precedent for how real-world wiretapping laws apply to virtual worlds and what companies must do to comply with them.

"We don't record conversations as a matter of course," Wilson said. "We use common sense. If the police come to us and say that someone is in danger, we cooperate."

But there is so much conversational traffic in There.com that the company stores only about 30 minutes worth of the "chat logs." It's just like text messages on cell phones. There is too much traffic to monitor all of it. But if asked to record a specific conversation under court order, Makena will do it.

The legal authority to intercept any form of communication is clear as long as law enforcers have a court order, said Dempsey. Every virtual space - including the online gaming service Xbox Live, the Second Life virtual world or the online game World of Warcraft - is subject to the same laws that require them to allow wiretapping.

Clearly, criminals and terrorists could use virtual worlds to escape monitoring via the phone system or e-mail. And it would be smart of authorities to pursue them in those places, provided they have the appropriate court orders. But if I were caught running a criminal enterprise in a virtual world, I would say that I was "just pretending to do it, not really doing it."

In such a case, the authorities would have to dig out evidence from the real world to corroborate the evidence from the virtual world, according to Sean Kane, a virtual world legal expert and attorney for Drakeford & Kane in New York.

If, for instance, I disclosed intimate knowledge of how to make bombs in a virtual world chat, that would probably be admissible evidence in a case that included other bomb-related evidence. But if I'm merely playing a role where I'm planting bombs inside the world of "Battlefield 2" video game, it's not good evidence.

"What occurs in the virtual world is tantamount to free speech," Kane said. "You have a right as an author to make statements without it being considered treason. I could write a book about how terrorists are taking over the government, but I'm not a terrorist because I do that. If parties are engaged in terroristic activities in a virtual world, it may bring them to the attention of a governmental agency."

Judging by other legal quandaries in virtual worlds, it's just a matter of time before cases arise on this issue. Already courts are being asked to decide what happens when someone perpetrates a fraud in a virtual real estate transaction or whether you can be taxed on the money you make in a virtual transaction.

It's time to sort it all out. "My prediction is that this is all going to heat up in the next couple of years," said Kane.

For more information on this topic, look at www.lawspotonline.com/lawspot or www.virtuallyblind.com.

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