

## VIRTUAL PROPERTY AND THE LAW\*

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On first glance, the web site of IGE Ltd. ([www.ige.com](http://www.ige.com)) looks like just another on-line auction site. Dig far enough on the IGE site, though, and you'll realize that not is all as it seems:

Level 60 Female Gnome Warrior. Great skills and talents! Full Lieutenant Commander's set! Arcanite Reaper axe! Includes a mount! \$299.99

90 JEDI! Superb Gear, 4th-Gen Double-Bladed Lightsaber, Ship Deeds, Y-Wing, BARC, All Expansions, Great saber crafter \$799.00

Abram's Axe of the Stoic \$11.00

Obvious questions aside (what discount do I get for the gnome warrior without the mount?), these postings reveal one important thing: IGE's customers are not trading in tangible real-world goods, but in virtual property (namely, currency, items and characters from on-line computer games). The fact that these virtual goods are bought and sold for real money indicates that virtual property is starting to have real-world significance. This shift raises many interesting legal questions, most of which do not yet have clear answers.

### What is Virtual Property?

Virtual property arises from massively multiplayer online games (MMOGs). In these games, players create characters and enter an on-line world, where their characters interact with other human-controlled characters as well as computer-controlled characters and creatures. By engaging in various activities, characters acquire in-game items and money (which can be purchased and traded within the game itself), as well as "experience" which improves their in-game abilities and talents. The result is "virtual property".

### What's the Fuss About Virtual Property?

As the IGE website demonstrates, virtual property is reaching out and affecting the real world. This may not seem particularly dramatic. After all, who cares if one geeky gamer wants to pay \$11 for another geeky gamer's virtual magical battle axe? But giving real-world value to virtual property can lead to real-world problems. Consider the following:

- Last year Chinese gamer Qui Chengwei received a suspended death sentence for murdering fellow gamer Zhu Caoyuan. Qui had spent countless hours playing the MMOG "Legend of Mir III", and had acquired one of the game's most powerful

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weapons. He lent this virtual weapon to Zhu, who then sold it for cash without Qui's permission. Qui subsequently attacked and killed Zhu.

- Gaming sweatshops have sprung up in which employees play games for hours at a time for minimal wages to acquire in-game wealth and to “level-up” characters, which the employer then sells to other players.
- In 2003, a Chinese court ordered a gaming company to return a cache of virtual property to the plaintiff, a gamer whose account had been hacked and looted.
- Recently another Chinese court upheld the conviction of a man found guilty of selling stolen passwords and on-line equipment.

As you can see, virtual property creates fascinating legal questions – is virtual property “property” in a legal sense? If it is, who owns it? And how should it be regulated? Some of these questions are discussed below.

### **Is virtual property “property”?**

The important starting point is whether virtual property is actually property in a legal sense. After all, I don't actually have a fourth-generation double-bladed lightsaber (and I rue it daily) – my virtual character has one in a virtual world, and all that there is in the real world is computer code that is translated into an on-screen image.

Of course, the law recognizes many forms of intangible or incorporeal property and proprietary rights – choses in action, patents, copyrights and trade-mark rights, goodwill, etc. Combine that fact with the fact that people are willing to pay actual money to acquire virtual property (i.e., that virtual property has value, and it seems apparent that virtual property should be considered “property” for legal purposes.

### **Who owns virtual property?**

In an MMOG, the game company creates and makes available the game software so that players can create on-line accounts and, for a fee, access and play the game. The relationship between the game company and player is defined by various agreements – typically a subscription agreement governing payment for the service, and a terms of use agreement governing the player's use of the game service. These agreements will almost certainly specify that the game company owns everything associated with the game, including the software, the graphics, copyright, trade-marks, etc.

In these circumstances, what do players own? They subscribe to an on-line service where they are allowed to use the game company's software, but they do not buy anything. On the other hand, the more time they spend playing the game, the more in-game property they acquire, and the more their characters improve. Shouldn't I own a character I have spent time and money developing? China is clearly moving towards this perspective: a Chinese court recently stated that players had spent time, energy and money acquiring in-game goods and adding value to the virtual property.

How MMOGs are characterized is also relevant: if I subscribe to an MMOG, I am paying for the pleasure of playing the game as a leisure activity. But if someone else is willing to buy my character for real money, can my game-playing turn from pleasure into work? Virtual sweatshops aside, some individuals make healthy incomes from creating and selling virtual property.

Some terms of use address virtual property. For example, the user agreement for Blizzard Entertainment's "World of Warcraft" states that Blizzard does not recognize any property claims outside the game or the purported sale, gift or trade in the "real world" of anything related to the game, and that players may not sell items for real money. Blizzard takes this seriously, and last year cancelled over 18,000 player accounts for violating its terms of use.

Other game companies take a different approach. Sony Online Entertainment has established an auction service for "EverQuest II" where players can securely buy and sell virtual property (in accordance, of course, with SOE's terms and conditions). SOE has accepted that trading in virtual property will occur, and is trying to harness that activity (it costs real money to list items for sale on SOE's auction service, and SOE takes 10% of the total amount of each completed sale).

Of course, whether some companies can restrict what players do with virtual property is another open question. Terms of use agreements are contract of adhesion imposed on players, and game companies could have difficulty enforcing them. This is especially true if players are recognized as having ownership rights in virtual property.

### **What are some consequences of recognizing virtual property?**

Player disputes over ownership of virtual property are becoming more common, with last year's Chinese murder case being an extreme example. Virtual sweatshops and gaming factories are another real-world consequence of virtual property's new status. Yet game companies have their own legal concerns, especially exposure to liability for virtual property claims. What if a new game feature renders useless an item that I purchased for \$500 real-world dollars? What if I have spent hours creating a character, and the game company decides to discontinue the game (after all, the game industry is a competitive one and not all MMOGs succeed or survive)? What if I develop massive in-game holdings for my own game enjoyment (with no intention of selling them), and someone hacks into my account and takes everything? If gamers turn to game companies for real-world compensation in these scenarios, the argument goes, the incentive for developing and providing MMOGs will diminish. The virtual property question certainly has many sides.

### **Can (and should) virtual property be regulated?**

MMOGs are hugely popular in Asia, and some Asian countries are already taking steps to regulate virtual property. For example, laws in the Republic of Korea hold that in-game items possess property value and that there is no difference between virtual property and money in a bank account. In Taiwan, virtual property is considered "movable property", and stealing such property can result in imprisonment.

Are such measures necessary? MMOGs are not as popular in North America as they are in Asia, so perhaps the issues are not as pressing here. And perhaps existing laws are perfectly suitable for dealing with virtual property. For example, misappropriation of virtual property can arguably be dealt with by the existing principles of conversion, unjust enrichment or trespass to chattels (a US district court ruled last year that trespass to chattels applies to interference caused to home computers by spyware, demonstrating again that long-standing legal doctrines can apply to digital-age issues). North American legislatures probably have more pressing issues than virtual property (such as video game violence, apparently), but leaving the questions to individual judges may not fully canvas the relevant issues.

### **Final Thoughts**

As technology and connectivity continue to improve, more and more issues relating to virtual worlds and virtual property will arise. It seems clear that our legal system will soon have to address virtual property. Whether it will respond by adapting and applying existing laws, or by creating new laws, remains to be seen.

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