

Andrew Herman, Rosemary J. Coombe & Lewis Kaye

YOUR *SECOND LIFE*?

Goodwill and the performativity of
intellectual property in online
digital gaming

This article examines the performativity of intellectual property in digital gaming environments, with a focus on Massively Multi-Player On Line Games (MMOGs). The analysis centers on the creation and management of goodwill, an intangible asset of considerable value to corporations based on affective bonds between consumers, corporations, and their commodities in the marketplace. Most critical analyses of intellectual property consider neither the centrality of goodwill to corporate management of their intellectual properties in digital environments, nor the significance of the legal conditions that structure activity in such contexts. We develop a theoretical framework based on cultures of circulation involving network sociality, circuits of interactivity and the extensibility of the computer/user interface. This enables us to better understand shifting relations of power and reciprocity between corporations and consumers in digital gaming contexts, where the division between player-consumption and player-production is increasingly blurred. Technological capacities for consumers to become producers of gaming content changes the terrain upon which conflicts between corporations and consumers about intellectual property are negotiated and enhances the value of goodwill. An examination of Linden Lab's Second Life – one of the fastest growing MMOGs and the first to affirm players' intellectual property rights in their digital creations – provides an illustration of both the limits and possibilities afforded by goodwill as a form of emerging governance in game worlds.

Keywords intellectual property; goodwill; digital games; consumption; performativity

Introduction: goodwill and the performativity of intellectual properties

Linden Lab, the developers of *Second Life* – a Massively Multi-Player Online Game (MMOG) – transfixed the audience at the ‘State of Play’ conference in November 2003 with an announcement that literally promised to change the state of play in digital games.¹ They declared that they were prepared to recognize the value of the creative contributions that gamers made to the virtual worlds that they, as developers, otherwise controlled. From that moment forward, all players of the game would be granted intellectual property rights in their creations both within the game space and in ‘real life’. This was a radical departure for the online gaming industry, where nearly all End User License Agreements (EULA) and Terms of Service (TOS) require players to sign over their intellectual property rights in order to enter into the virtual space of the game.

Although *Second Life* is relatively small by MMOG standards,² the implications of Linden Lab’s new policy for the electronic gaming industry, and for the entertainment industry in general, are potentially profound. Electronic gaming has become one of the most important profit centers in the entertainment industry. For example, in terms of profit margin based on revenue minus development and marketing costs, Sony Online Entertainments has a higher profit margin than the top box office grossing movie of all time, *Titanic* (Macris *et al.* 2004, p. 24). Like many other cultural commodities in the age of information capitalism, such games are produced and circulated primarily as bits and bytes of digital code corporately owned under various regimes of intellectual property.

The increasing value of cultural goods rests upon an ever-expansive regime of intellectual property rights – embodied in copyrights, trademarks, patents, trade secrets, and publicity rights – that enables the cultural industries to exploit the value of their intangible assets in an increasingly global marketplace (cf Coombe *et al.* 2005, Coombe 1998, 2004, Lessig 1999 and 2004, Litman 2001, Rifkin 2000). Scholarly analysis of the centrality of intellectual property regimes in constituting informational capital largely has focused on their globalization, their aggressive assertion by corporations, their legislative extension, and their legitimation in courts of law. Within such analyses, we argue (Coombe and Herman 2004), there is a tendency to construe conflict over intellectual property rights as a Manichean morality play between corporations and creators or consumers valorized as transformative creators of cultural value (McLeod 2001, 2005, Vaidhyanathan 2001, 2004). On the one side, corporations seek to expand indefinitely the territory and temporality of their intellectual property claims in what some scholars have termed a ‘second enclosure movement’ (Boyle 2003, Hunter 2003). These forces of ‘copyright capitalism’ (Leyshon 2003) are arrayed against a shifting coalition of artists,

programmers, cultural activists, and consumers on the other side, who seek to preserve and expand access to a 'free culture' (Lessig 2004) that is often animated by a rather romantic notion of the public domain or 'commons' of shared cultural goods (Chander and Sunder 2004, Streeter 2003). Such dualistic rhetoric unfortunately obscures the complexity of the politics of intellectual property in digitally constituted social relations of power.

What we seek to explore in this paper is the *performativity* of intellectual property as both a social form and a cultural process in digital contexts. What is at stake in intellectual property as performativity is not simply the expansion of corporate control over cultural goods and resistance to such expansion, but the production of a particular social imaginary regarding the identity, rights, and responsibilities of corporate producers and consumers of cultural goods. One of the key outcomes of the strategic management and negotiation of intellectual properties in the marketplace is the performative production of positively valenced corporate and consumer figures manifested in the accumulation of *goodwill*. This process, we will show, involves considerable misrecognition of the contributions of corporeal effort, the nature of authorship, and the economic value of the social activity of cultural production.

Goodwill is a notoriously slippery concept in discussions of intellectual property; in most critical scholarly discussions, in fact, goodwill is largely ignored as a concept and phenomenon. Often, goodwill is simply listed alongside better-known types of intellectual property such as copyright, trademark, and patents as an intangible asset critical to the well being of the corporation. In accounting terms, goodwill is described merely as the market price of an enterprise above and beyond that of the fair market value of its tangible assets (i.e. real estate, buildings, inventory, cash, credit, etc) less its liabilities (Blair and Wallman 2001, Hand and Lev 2003).³ Goodwill can encompass the valuation of a happy workforce, a strategic location and, most importantly, customer loyalty. In this respect, the accounting definition of goodwill dovetails with the legal definition of goodwill that recognizes the reputation and symbolic capital of the enterprise in the marketplace. Like the status of the corporation as a person, goodwill is a legal fiction. This fiction narratively conjures an affective bond and social relationship of trust between the corporation and the consumer mediated through its goods. The plot of the narrative is as simple as it is circular: goodwill is generated when the corporation delivers a positive experience for the consumer, thus encouraging the continued consumption of the corporation's goods. As a legal fiction, goodwill enables corporations to claim as economic value consumers' affective relation to the corporation as the only legitimate source of what they desire in the commodity form.

In intellectual property law, goodwill is generated through the strategic management of trademarks, brands, advertising slogans, logos, and the like, as the most visible incarnations of the corporation's persona and moral identity in the marketplace. There have been many conflicts over these manifestations of

corporate identity on the Internet (Coombe and Herman 2001a, 2001b). As a social relationship of power and reciprocity between corporations and consumers, however, goodwill may also become a crucial variable in disputes about intellectual property that do not necessarily involve trademarks. For example, copyright disputes between corporations and consumers over file sharing and sampling in the music industry have tarnished the goodwill of consumers towards certain bands (i.e. Metallica), entertainment corporations, and industry associations (i.e. the Recording Industry Association of America), and certain bands (i.e. Metallica) perceived to be overzealous in enforcing their intellectual property rights (Demers 2005, McLeod 2005, Sloop and Herman 1998). In digital games, relations of goodwill usually revolve around the copyright status of materials created in the virtual spaces of gameplay.

Goodwill is produced through relations of power and reciprocity as these are insinuated in the structures of digitally mediated environments that can be understood as having three imbricated registers: a 'culture of circulation' (Goankar and Povenelli 2003, Lee and LiPuma 2002) based on 'network sociality' (Wittel 2001); specific 'circuits of interactivity' that shape the quotidian experience of digital gaming and its political economy (Kline *et al.* 2004); and the relative extensibility of the computer/user interface in constraining and enabling player creativity (Johnson 1997, Manovich 2001). We will consider the characteristics of each of these registers before turning to the particularities of *Second Life*.

Cultures of circulation and network sociality

Dillip Goankar and Elizabeth Povinelli (2003) open up a more productive pathway for understanding goodwill in digital environments when they urge us to attend critically to the circulation of cultural forms:

There is a growing recognition of the importance of circulation as the enabling matrix within which social forms, both textual and topical, emerge and are recognizable when they emerge. As a result, it is no longer viable to think of circulation as simply a movement of people, commodities, ideas, and images from one place to another. 'Circulation is a cultural process', say Lee and LiPuma (2002, p. 192), 'with its own forms of abstraction, evaluation, and constraint, which are created by the interactions between specific types of circulating forms and the interpretive communities built around them'. And those interpretive communities, whether they be coffeehouses and publishing firms or banks and stock exchanges, set the protocols for interpretation by inventing forms, recognizing practices, founding institutions, and demarcating boundaries based primarily on their own internal dynamics.

(2003, p. 391)

'Cultures of circulation' give shape to the flows of cultural forms, in other words, be they Kentucky Fried Chicken, Nike Shoes, or Mario Brothers Games (and the intellectual property that is manifested in, and in relationship to, each). They should be approached analytically as topographies to be mapped by shifting relations of power-knowledge, which call into being cultural forms and their recognition. The politics of recognizing (and misrecognizing) conflicting claims of intellectual property rights involve the corporate persona as manifested in its claims to ownership, or non-ownership, of intellectual properties and how such claims are legitimated, negotiated, or contested by consumers in digital games. It is the fabrication and transfiguration of goodwill at the point where corporation, commodity, and consumer interact in interpretive communities that define the cultural form of intellectual properties in digital games.

As a culture of circulation, digital gaming is animated by what sociologist Aaron Wittel (2001) terms 'network sociality'. Working with the macro-sociology of the 'network society' first articulated by Castells (1996), Wittel argues that the quotidian performance of personal and social identity is increasingly dislodged from traditional sites of social interaction (i.e. family, work, localized communities, and affiliations) and progressively embedded in the medium of information technology. This is especially the case with the moral identities of corporations and consumers and the social bond manifested in the production of goodwill (Coombe and Herman 2000). In digital environments, the network sociality that produces the social bond of goodwill is created, as Wittel puts it, 'by the movement of ideas, the establishment of only ever temporary protocols, and the creation and protection of proprietary information . . . It is informational, ephemeral but intense, and is characterized by the assimilation of work and play' (2001, pp. 51, 71). Apropos, many gamers now consider their activities within the virtual space of the game as creative work, not simply leisurely play, and many are indeed happy to make such play a big part of their life work. This view also underpins their claims to intellectual property rights in their creative contributions.

The interpretive communities that Goankar and Povenelli invoke as the loci of cultures of circulation are not embedded in discrete and localized spaces. Rather, they are increasingly dispersed and distributed across different server nodes and internet protocol addresses, Internet cafes, and wireless hotspots, where imagined communities are virtually and evanescently instantiated at the moment of connectivity and terminated at the moment of logging off. These communities use the dialogic potential of digital technology to establish protocols, create new forms of digital content and, critically, to attempt to negotiate the propriety of the proprietary conditions of digital governance.

Circuits of interactivity

In their ground-breaking work *Digital Play* (2004), Kline, Dyer-Whitherford, and De Peuter offer a compelling framework for an analysis of the culture of circulation of digital games and its network sociality. As virtual worlds of interactivity, they argue, online digital games represent an 'ideal type of commodity'. This type of commodity expresses the fundamental logic of 'information capital' which maintains growth through the integrated management of technological innovation, cultural creativity, and mediated marketing (p. 29). It also reconfigures the position of the consumer, who no longer simply purchases the game as a product, but is actively engaged in its continued development and marketing, mediated through the feedback loops created by digital technologies which continually circulate information and innovation to feed capital accumulation.

In mapping the topography of these forms of circulation, the authors use the Marxist notion of 'circuits of capital' (production-commodity-consumption) to argue that digital games exist at the intersection of dynamic processes in three specific 'circuits of interactivity': culture, technology, and marketing. Each circuit, they suggest, has its own specific but overlapping social actors and relational structure, as well as its own essential contradiction. The cultural circuit refers to the gaming environment as a semiotic domain in which game designers, players, and games themselves interact to produce a virtual world of meaning and identity. Interactivity involves the agency of players within the semiosis of the game space created by designers. Depending on the game and its interface, players have greater or lesser agency to forge an identity and a unique path through their avatars and the activities in which they choose to engage. Regardless of the degree of agency exercised in this particular circuit however, Kline *et al.* argue that players are always limited by the game's underlying code. We would suggest that although this is indeed true for early 'First Person Shooter' games such as the legendary *Doom* series, digital games that provide greater room for agency and the capacity to modify the underlying code are being developed and attracting greater interest (e.g. the popular *Unreal Tournament* series, cf Curlew 2005, Nieborg 2005).

The technological circuit refers to the interaction between the programmers, users, computers or gaming consoles, and the underlying software. This interaction encourages the development of particular forms of subjectivity and embodiment particular to the networked telecommunications environment as it 'inculcates the skills, rhythms, speeds and textures of the computerized environment' (2004, p. 55). This circuit entails a continual process of technological innovation and diffusion; as games become goods of mass consumption, new innovations in gameplay are developed and shared. Thus the contradiction here is between 'enclosure' and 'access'. Corporations seek to

limit possibilities of interactivity in order to maximize profit, as gamers seek and develop their own uses for the games and the network through practices that range from modifying consoles and ‘modding’ gaming software to the reproduction and counterfeiting of intellectual property protected software and copyrighted content (cf Banks 2005, Nieborg 2005 and Sotamaa 2005).

In the circuit of marketing, the primary actants are marketers, commodities, and consumers. The vast ‘promotional web’ of the gaming industry and its branding strategies seek to ‘close the loop between corporation and consumer, reinscribing the consumer into the production process by feeding information about his or her preferences back into the design and marketing of new game commodities’ (Kline *et al.* 2004, p. 57). The contradiction here is between commodification and play. The world of gaming promises pleasures of freedom, transgression, and creativity, but these are perpetually incorporated into marketing efforts that may or may not, in turn, incite gamers to find new meanings that escape the corporate gaze.

This framework is useful in so far as it articulates the different roles and agencies that corporations and consumers embody in digital gaming considered as a culture of circulation with multiple registers. It is necessary to take issue with a few of the authors’ formulations, however. We would insist that all three circuits of interactivity are cultural in terms of the identities they enable, the properties they produce, the practices they invite, and the politics they engender. Their understanding of the politics of intellectual property in digital games is, moreover, too one-dimensional to adequately account for the dynamism that characterizes this as an issue in virtual worlds. They present gaming companies as inveterate enclosers of an ever-expansive terrain of intellectual property. Although corporations have indeed been stringent in enforcing their intellectual property through digital rights management of gaming consoles, the situation is more complex when it comes to the production of context and content in online games.

Kline, Dyer-Witherford, and De Peuter tend to view users’ agency in refashioning games as extrinsic to the flow of capital accumulation; all users’ modifications are treated as akin to hacking or piracy (pp. 210–211, 281–282). However, in a growing number of online games, player creativity in deploying the underlying source code is considered to be essential to consumer satisfaction, product development, and marketplace success (Curlew 2005). All of these circuits are domains of cultural contestation in which intellectual property is produced and control over the value of creation is determined in the interplay of designers and players, programmers and users, and companies and consumers. Shifting discourses and evolving practices of authorship/agency and ownership/property cut across all three circuits of interactivity in the online gaming community and are characteristic of it as a culture of circulation. Indeed, we will argue that developments in digital gaming, as embodied in the interface between the different roles played in the various circuits of

interactivity, have increasingly ‘queered’ concepts of producer and consumer, authorship and ownership, and real and virtual forms of property.

The interfaces of extensibilities

MMOGs are sociologically distinctive as ‘persistent worlds’. Their virtual reality is not dependent upon the active engagement of any one player at any one time but continues as players take breaks, go on vacations, and new players are introduced and socialized. In other words, they function as ongoing social systems replete with their own forms of governance and moral economies of practice that vary depending on the structure of relations established by the respective game’s End User License Agreement (EULA) and Terms of Service (TOS). This last point is of crucial importance: MMOGs are not merely a discrete and categorically identifiable class of gameplay, but also, significantly, a variable set of legally structured and contractually bounded computing practices. A thorough consideration of virtual property relations in gaming environments must attend to the external parameters and specificities of these places of digital sociality and the relations, expectations, and practices they engender among the players as an interpretive community in a distinctive culture of circulation. It is precisely this failure to consider the *constitutional* dimensions of gaming worlds that contributes to a tendency either to celebrate players’ creative work uncritically as simple contributions to a gift economy (Postigo 2003), or to evaluate it critically in arbitrary terms (e.g. Ondrejka 2005a). Neither approach addresses the crucial issue of where cultural value is being produced and who exercises control over it.

A constitutional perspective permits us to consider the corporate strategies that underpin various regimes of virtual governance, and how these relate to distinctive attitudes that different game publishers and software firms have towards earning goodwill and thus towards player agency. This could be considered to be a question of *interface*. Initially employed by Steve Johnson (1997) to describe the visual, physical, and phenomenological system through which users interact with a particular computing environment, the concept enabled us to see how the powerful visual metaphors of desktops, files, bins, and icons helped to make computer use a more prosaic experience. Johnson was concerned with the success of the modern graphical user interface, the software form that is now familiar to us as the public face of the personal computer operating system. Adapted and extended for the Internet through the related metaphors of links and pages, this interface contributed to making the personal computer the ubiquitous machine it is today.⁴

Computing practices mediated through a software-generated interface have varying degrees of *extensibility* – the ability to customize, control, and elaborate the users digital presence. These levels of extensible interaction are

bound up with interrelated property *and* labor relations, many of which are anticipated by, and provided for, the intellectual property rights holders of the underlying code, the programs designed with it, the graphic content it produces, and the symbols used to market it as a distinctive product. The constitutional framework established in EULAs and TOSs varies in complexity depending on the potential extensibility of the interface. The task-specific use of a typical commercial software package (e.g. writing with a word processor) falls towards the non-extensible end of the spectrum. Users are almost completely constrained by a proprietary, programmed interface that supports a one-dimensional, producer/consumer relationship between the user and the software producer. Notions of authorship and intellectual property are predicated on the idea that the software is complete, a finished work, and therefore the property of the publisher (cf Lessig 1999, Litman 2001). Users purchase limited rights to use the software for designed and approved purposes, copying is restricted, and modification is often banned outright. Value is derived from sales of software, and goodwill accrues with an application's reputation for technical integrity and, if fortune or strategy would have it, its ability to become an industry standard.

This basic producer/consumer relationship has been typical of gaming software. Most PC or console games are discrete software applications with limited use provisions. Games were traditionally installed and used locally, with licenses granted on terms similar to other forms of commercial software. The advent of the Internet enabled the introduction of a new range of networked gaming. Many video games now can accommodate networks of two or more players connected to each other over the Internet, yet all running the same software locally. Such network capabilities do not necessarily, however, alter the way the game publishers approach the question of intellectual property.

MMOGs trouble this straightforward relationship between producers and consumers, because the game software ceases to be a complete and inviolable work of authorship. An MMOG environment instead, is always a work-in-progress, dependent to varying degrees on user input. A network game is only as compelling as the community playing it. The size, quality, and active involvement of a game's user base becomes one of its most saleable features. An MMOG interface both demands users' ongoing involvement in a given virtual world and, to greater or lesser degrees, facilitates the modification of this environment to meet players' needs and preferences. If users create content for the game, not surprisingly they often begin to assume a proprietary relationship to the virtual accoutrements they develop through gameplay (Lastowka and Hunter 2004). They come to understand their play as a form of creative labor in which they 'earn' value.

This understanding demands a different constitution with respect to labor and property. As the game's constitution comes to govern a wider set of social

relationships in which value is created, it is also increasingly, interpreted, negotiated, and contested by those whom it governs. In these circumstances the narrative of goodwill is inevitably transformed. The story is no longer simply the teleology of consumers' enjoyment of a product that effectively binds them to the corporation. The generation of goodwill takes a different narrative turn wherein the very terms of governance that structure the relation between consumer, game, and corporation, are evaluated in terms of the way they distribute value as well as the pleasures they afford. The characters that enact the story of goodwill – corporation, consumer and commodity – become transmogrified. New notions of authorship and agency are articulated in the enjoyment of digital gaming through the possessive attitudes that it engenders.

Authorship, agency and appropriation in registers of performativity

The distinctive character of MMOGs interfaces raises new issues of authorship and agency. There is no doubt that the technological circuits comprised by new media have provided the conditions for a new participatory culture involving 'interactive audiences' (Jenkins 2003, p. 215, cf Coombe and Herman 2001b, Jenkins 1992). This can be accounted for by the convergence of three specific sets of developments:

- a) New tools and technologies enable consumers to archive, annotate, appropriate, and re-circulate media content, b) a range of subcultures promote DIY [do-it-yourself] media production and a discourse of how consumers have deployed their technologies, and c) economic trends favoring the horizontally integrated media conglomerates encourage the flow of images, ideas, and narratives across multiple media channels and demand more active modes of spectatorship.

(Jenkins 2003, p. 213)

These participatory cultures exist in an uneasy but dynamic relationship with 'commodity culture'. The former continually appropriate and remake what is produced and circulated by media corporations, while media corporations continually try to incorporate consumer productivity and creativity into profitable commodity forms. Jenkins appropriately suggests that a dialectic of resistance and cooptation is not the most fruitful way of understanding this dynamic. Rather, what we are witnessing is a subtle and evolving dance of collaboration and cooperation in which the corporate persona becomes articulated with the creative and interpretive work of the gaming community to generate goodwill.⁵

At the core of the argument for participatory cultures is the idea of 'player-authorship' nominated by Cindy Poremba. As she argues '[P]layers do not use the digital game as a mediated experience, but often as a medium in and of itself' (2003, p. 4). They can deploy this medium to create new aspects, features, and content in the game environment as well as modes of playing (tactics), all of which can be shared with (or sold to) others. However, when players create their own in-game artifacts, they become agents of cultural production. A dialectic of agency and cultural production based on digital interactivity is developed one which uses 'code worlds' that are 'relatively mutable' (3). Players maintain a 'distributed agency' in game contexts, a concept that foregrounds the network sociality of cultural production in digital environments and displaces the traditional idea of the individual originating author. This is also evoked by Lister *et al.*'s (2003, p. 34) concept of the 'prosumer', a hybrid joinder of the positions of producer and consumer enabled by the relative extensibility of digital media (in programs like Photoshop or Garageband for example).

There are at least four different practices of distributed agency that use the medium of digital gaming technologies. The first is the creation of artifacts, avatars, or spaces within the game using digital resources provided by the game space as it has cumulatively evolved. This 'crafting' is best exemplified in the popular game, *The Sims* (see Au 2002, Curlew 2004) where it is estimated that 90 percent of the content is user-crafted (Herz 2001). Second, there is the remediation of other media forms into digital games, such as the creation of movie-like scenarios like *machinima* (cf Curlew 2005). Third is the aforementioned practice of modification, or 'modding' of existing games using software design engines and underlying source code provided by game developers to create entirely new games, such as the creation of *Counter-Strike* out of *Half-life* and *Velvet Strike* out of *Counter-Strike*. Finally, the activity of 'meta-gaming' involves the creation and dissemination of 'mods', patches, and gaming advice through the network interactivity of virtual gaming communities.

All of these practices pose issues of authorship and ownership, but the latter set of practices have produced the most extensive community dialogue about intellectual property rights and what we might consider to be citizen deliberations about the qualities of governance provided by their corporately authored constitutions. Several 'rhetorical visions' of authorship and creativity are operative in these communities of practice, but all of them address players' activities as potential agencies of authorship (Poremba 2003, p. 10). The interpretive community of prosumers in these worlds of 'co-created media' places 'emphasis on the agency of gamers and the power they wield in collaboration, through their play, their community discussions, and, more problematically, when they begin to produce their own content by actively

engaging and transforming the texts their communities are centered on' (Nieborg 2005, pp. 2–3).

Despite new visions and understandings of authorship in MMOG communities, the extensibility of the interface won't necessarily be accompanied by constitutional recognition of the agencies enabled by the digital game nor by property rights conceived of in authorial, originary terms. Interfaces were traditionally valued for providing a complete, consistent, and reliable experience for end users. Game publishers thus sought full control over in-game property relations to provide a consistent playing environment. The continual delivery of consistency and reliability to consumers is, in this scenario, the basis for accruing goodwill. Many popular MMOGs, such as Sony Online Entertainment's (SOE) *EverQuest* (a swords and sorcerers-type world) retain this approach to authorship. In the constitution of such environments, player-generated data is treated as just another element of the corporately owned game. All rights associated with in-game, player created content are reserved by the publisher.

Despite corporate disavowal, real-world property relations never have been fully excised from these virtual places. Author Julian Dibbell (2003) reports that the auction market for virtual goods produced for *EverQuest* is about five million US dollars. SOE initially sought to ban the trading of online goods, but the attempt was futile. The company now attempts to control it by granting 'limited licensing' rights to this digital chattel, taking royalties on its trade in online markets. This is a strategy that may well backfire, online commentator 'Cmndr Slack' suggests, providing grounds for the real-world valorization of such data as valuable intellectual property:

Although SOE can justify the transaction fee for in-game sales for US dollars as a 'service charge', it seems that it is also an acknowledgment of the intrinsic value of virtual chattels. By involving itself in an industry that hinges on the idea that players own their virtual items, coin and characters, SOE's practices may contradict its assertions in its EULA. Describing sanctioned virtual chattel sales as a license transfer may protect SOE in the short term, but since the items behave as property, and because SOE is taking a share of the sale price, it is possible that the EULA could be invalidated under a misrepresentation theory.

(2005, n.p.)⁶

This contradictory behavior on the part of the corporation is indicative of the recognition of the radical contingency of goodwill in such contexts and evolving corporate acknowledgment that qualities of governance may shape gamers' loyalty.⁷

***Second Life* and the ethics of virtual intellectual property**

Obviously, Linden Labs have adopted a very different approach to in-game property in *Second Life*. Rather than ignoring the issue of player authorship, exploiting the creative labor of prosumer communities by seizing their innovations and banning player disposition of online possessions, they have embraced the idea of player-generated intellectual property. Moreover, they have constitutionally transformed *Second Life* to legitimate gamers as creative and collaborative rights holders who possess a genuine financial interest in the products of their efforts. In other words, their play is recognized as a form of authorship that yields the kind of 'work' that intellectual property properly protects under conditions of information capitalism. Indeed, this corporate strategy is built directly into all of the game's circuits of interactivity.

Players are encouraged to change and develop their appearance and identity, build their own virtual domiciles, acquire chattel, automate their creations using a dedicated scripting language, and collaborate with each other in developmental activities (Linden Lab 2005a). Such activities are integral to *Second Life* gameplay, which avoids the solitary, task-oriented, level-advancing gameplay characteristic of MMOGs such as *EverQuest*. It is corporate strategy to make the *Second Life* in-game economy as 'real' as possible (Ondrejka 2005b). Not only are intellectual property rights granted to players for their digital creations, players are enabled to transfer Linden Dollars (*Second Life*'s in-game currency) into real US currency. Linden Lab has created perhaps the most extensible interface available to gamers both in its facilitation of distributed developmental agency both inside and outside of the world of digital gaming and in its recognition that the symbolic value created by play has real value. In its first incarnation as Linden Dollars, however, such exchange value is also clearly an innovative new means of accelerating and leveraging the value of goodwill. Through what agencies was this accomplished? What does it portend for the future performativity of intellectual property in digital environments?

Gamers' intellectual property rights were granted in response to extensive criticism by users about the expropriation of their creative labor. As one senior member of the community, 'ZHugh Becqueral' wrote to the online forum:

I have poured a lot of time in the game. I saw the posts of lots of people demanding more content and then leaving, and I thought, well the game does need content but rather than complaining what I can do is contribute. I have been wrestling with my conscience . . . about whether or not to stay. I didn't want to leave . . . but the TOS makes it quite clear that on the one hand all code created in game belongs ultimately to the Linden's and that on the other we are not Linden employees and are not remunerated . . . The in-game *intellectual property* wrestling is silly because every single letter of code belongs to Linden Labs . . . either the terms of

service will change in order for me to contribute code that I own, or I will wait for Linden Labs to create the code that they own so that the game becomes sufficient and rewarding.

(<http://forums.secondlife.com/showthread.php?t=65>)

As 'Mark Busch' asserted, however: 'The fun of *Second Life* for me is creating projects that other people enjoy. Who cares if it 'officially' is not mine and Linden are allowed to delete and/or copy it?' (<http://forums.secondlife.com/showthread.php?t=6505>). For this player, the labor of creation was indeed a gift with its own intrinsic satisfactions. For most players of online games, however, as Sara Grimes points out, 'resistance to corporate appropriation of online game culture has thus far consisted of little other than the internalization and legitimation of processes of commodification' (Grimes forthcoming). In other words, the only normative issue becomes the question of whose intellectual property it should be.

This disquiet was clearly anticipated by Cory Ondrejka, Vice President of Product Development for Linden Labs, who quickly intervened to declare the debate 'serendipitous'. Realizing that there are 'concerns and stresses between creating interesting and innovative content' and the terms of standard online gaming contracts, the company had decided to revise *Second Life*'s constitution. The new EULA/TOS would guarantee 'real world intellectual property rights to users over their digital creations' (<http://forums.secondlife.com/showthread.php?t=6763>). Participants now would have ownership rights with respect to their *Second Life* creations, just as they would with regard to any creations they made offline.⁸

Why did Linden Labs do this? Part of the answer has to do with the peculiar articulation of the circuits of interactivity that characterize MMOGs cultures of circulation of MMOG's. Ondrejka argued that increases in server capacity and technological breakthroughs in programming software had fostered the development of 'atomistic construction' of 'true creativity' in the technological circuit of interactivity, expressing people's desire for agency and authorship: 'It is important to look at the desire of people in general to express themselves through creativity and customization. People want to be perceived as creative by customizing their surroundings, to have their moments on the stage. In many cases, it seems that users are just waiting for the right tools' (2005a, p. 86). *Second Life* is designed to be such a tool.

Note that this rationalization involves an acknowledgement of a need for authorial recognition and a transition in the actant of creativity from people to 'users', a territorializing move that is both rhetorical, in that it incorporates the authorial desire to create within the marketing circuit that garners goodwill for the company, and technical, because it involves providing gamers with an even more extensible gaming interface. Ondrejka also emphasizes players' desire to collaborate as a key motivation in programming the game so as to

allow real-time interaction (Westerburg 2004). This desire is built into *Second Life*'s semiotic domain, where nearly all of the content is created by prosumers themselves. This content contributes, moreover, to the goodwill accrued by Linden Lab in the MMOG marketplace. When asked why Linden Lab had instituted the new policy, President and CEO Phillip Rosedale explained its most obvious virtue: 'We get the content. We allow people to create a world which will be thousands of times more compelling than we could create ourselves' (Krotoski 2005).

Although the buying and selling of in-game objects was no doubt accelerated by the granting of these new rights, the actual repercussions of *Second Life*'s new constitution only became clear in early 2005. Australian *Second Lifer* Nathan Keir licensed a puzzle game developed within *Second Life* to a real-world distributor. The game Keir called *Tringo* combined the early digital gameplay of Alexey Pajitnov's legendary *Tetris* with the classic game of Bingo. After *Tringo* sparked a sensation among residents of *Second Life*, Keir was approached by Donnerwood Media, which bought the rights to the game for 'a fee in the low five-figures' (Grimes 2005, p. B3). It plans to distribute internet and cell-phone based versions of the game. Keir retains the rights to *Tringo* within *Second Life*, where he profits from licensing the game to enterprising players who host tournaments.

Linden Lab responded positively to this news. The company acknowledged that the new constitution allowed for the generous profits Keir earned and will continue to receive from his derivative work. It is important to note, however, that the same constitution enables Linden Lab to use *Tringo* (and its author's success in profiting from it) for the promotion of *Second Life* itself. Indeed, all players' intellectual property (creations and chattel) continues to be constitutionally available to Linden Lab to generate further goodwill. A gamer's good fortune in leveraging activity in *Second Life* into a lucrative asset is an excellent marketing tool and one that is entirely in keeping with the kind of goodwill that Linden Lab seeks to cultivate. *Second Life* distinguishes itself from other MMOGs as a 'development kit and mod environment', a *workspace* where virtual objects and real-world ideas – like the rules of a game – can be conceived, built, and tested. Such features make *Second Life* more akin to programs like Macromedia's Flash than to games like *World of Warcraft* or *Everquest*. Linden Lab actively promotes *Second Life*'s game-developing capacity to draw in new players. As their website states: 'The possibilities are enormous, especially for up-and-coming game developers or professionals on a budget. Build your portfolio – prototype your concept and test it with a live audience, before developing the full version' (http://secondlife.com/games/game_dev.php Game Development).

It would be a mistake, however, to believe that the allocation and determination of appropriate parameters for intellectual property rights are any more settled in *Second Life*'s cultures of circulation than they are elsewhere, or

that the means for asserting and ascertaining these are any less ideological. The game world is rife with bootlegged videos; audio streams of popular music pour into its gathering places; and unlicensed corporate logos are reproduced on user-created objects such as lawn chairs and posters. Popular television game shows are reproduced and renamed for in-game participants. Gamers don't necessarily respect the intellectual property rights claimed by their fellow players and there is no consensus around norms of fair use.

When players claim ownership over what they create, it is usually the hegemonic notion of individual creativity they invoke, even as they seem to understand the collaborative nature of creation in the in-game context. However, despite Linden Lab's active encouragement of the use of Creative Commons licenses with respect to online creations – which would, in theory, permit users to use the works of others in their own creative activities provided that they claim no intellectual property rights in the underlying code they create and donate this back to the community – the ethos of Creative Commons licensing has not permeated very far.⁹ Disagreements about 'originality' and the disavowal of co-created content in *Second Life* are as common as Lockean arguments about the fruits of labor.¹⁰ In these Lockean arguments we find the basis for our assertion that the evocation and contestation of intellectual property in online environments is a performative speech act.

The vexed relationship between the concepts of performance and performativity has produced heated debate. A long history of performance-based cultural scholarship is ignored by many scholars who, influenced by Judith Butler's work, are nonetheless eager to add the muscular prosthesis of the performative to their theoretical arsenal. The concept of performance is 'central to contemporary views of culture as enacted, rhetorical, contested, and embodied' (Hamera 2006a, p. 2). Performance, which needs to be understood as both a verb and a noun, refers to the embodied processes and practices that simultaneously produce and consume culture (5). The concept refuses the semantic autonomy of the 'work' and insists, instead, on reading, using, and making texts as activities of productive poiesis (Hamera 2006b, p. 17). It is, therefore, particularly appropriate for worlds of digital gaming, where consumers are producing new dimensions for gameworlds in their gaming practices of using, reading, and developing the underlying work, all the while displaying and sharing communicative skills.

Performativity was originally understood as a linguistic means of world-making: a type of utterance that does something as its effect coincides with its use. Butler extends this beyond linguistic instances to suggest that a performative is both an agent and a product of the social and political surroundings in which it circulates. Its effects are reinforced through repetition (Hamera 2006a, p. 6). A performative uses the power of discourse to reproduce particular effects through reiteration, and these effects congeal into

socially recognized identities or positivities. Performativity enables us to account, then, for the extra-linguistic effects of linguistic practice. If performativity is indubitably linked to the idea of performance, and performances are necessary for the effects of performativity to be realized, the performative is not simply the accumulation of performances, nor do all performances behave ‘performatively’ (if we can coin a phrase).

If theorists of performativity underestimate the conceptual significance and specificity of performance, performance scholars may simplify the concept of performativity by stripping it of features essential to understanding its work. The performative is ‘parasitic upon conventional, citational, and socially stratified context. . . whilst as a theoretical tool or concept, [it] can be used in any given circumstance, its usefulness and what it uncovers and creates are fundamentally specific to the context in which it is sited’ (Dewsbury 2000, p. 475). These must be considered as ‘authorizing contexts’ that enable the utterance to have specific effects. Moreover, ‘performativity works by covering over and holding something into place’ (Mackenzie 2005, p. 74). Its constitutive effects are accomplished, in other words, through significant forms of misrecognition. This dimension of Butler’s argument is often elided:

If a performative provisionally succeeds . . . then it is not because an intention successfully governs the action of speech, but only because the action echoes prior actions, and *accumulates the force of authority through the repetition or citation of a prior and authoritative set of practices*. It is not simply that the speech act takes place within a practice, but that the act is itself a ritualized practice. What this means, then, is that a performative ‘works’ to the extent that it *draws on and covers over* the constitutive conventions by which it is mobilized.

(1997, p. 51)

Claims for, evocations of, and negotiations over intellectual property in MMOGs such as *Second Life* must be understood performatively. They are ritualized speech acts that simultaneously invoke and obscure particular authoritative conventions and authorizing contexts. Indeed, these speech acts reiterate and reinforce the authority of one of the dominant ideological narrative contexts that legitimates authorship itself – the Lockean labor theory of value. In the practices we have explored, players routinely assert property rights based on individuated creativity, expenditure of time, effort, and acts of agency understood as acts of creation and authorship. Players, however, don’t describe this as work, let alone as labor. Indeed, we would suggest that it is precisely the *embodied* nature of their activity that constitutes one important dimension of several of the constitutive misrecognitions at work here. To reiterate one authorizing context, let us turn to a seminal passage in Locke’s *Second Treatise*:

Though the earth and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that Nature hath provided, and left it in, he hath mixed his labour with, and joined it to something that is his own, and thereby makes it his property. It being by him removed from the common state Nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to . . .

(1965, II.5§27)

There is now a large literature appropriately illustrating the limits of using Lockean theory to justify contemporary intellectual properties, its constitutive exclusions, and its inapplicability to contemporary capitalist conditions; no one, however, denies its continuing ideological importance. When invoked in digital contexts, however, the corporeal dimensions of this authorizing context tend to be elided. Players occasionally catch glimpses of the fact that their labor is being expropriated ('we are not Linden employees and are not remunerated') but quickly lose sight of the fact that the extension of the body is the primary interface of extensibility from which the company profits. Rather than insisting on wages, occupational health and safety standards, disability insurance for repetitive stress injuries, or life insurance, the community cathects around the proper distribution of property rights that have market exchange value.

'All data is temporary': the half-life of your *Second Life*

The representation of forms of personalized computing and game consumption as expressions of creativity in the new constitution of *Second Life* ultimately serves to more fully extend the principles of a neoliberal economy into the game space. Both the creation of content and the collaborative sociality of the game are now wholly governed by the logic of market exchange. Despite the fact that some players disavow financial gain as a motivation for creating content, the desire to create and the desire to collaborate are expressed primarily by engaging in the activities of buying and selling. *Second Life* is so suffused with the ideology of market exchange that ownership of tradable property is a condition for continued residency. In order to maintain a durable presence in the persistent world of *Second Life*, you must purchase a plot of land using Linden Dollars. The company provides a basic stipend, but encourages players to earn money by developing content – a nifty spaceship or

clothing line, or perhaps a tattoo for avatars to wear – and selling it to others. This income, in turn, enables you to buy and ‘develop’ more land which provides the revenue base for Linden Lab – the more land you own, the more ‘taxes’ you pay (despite a virtual tax revolt, see Grimmelmann 2003).

The ontological nature of Linden Land and its relation to intellectual property is a lively topic of discussion in online circuits of cultural interaction. The relationship between virtual land and intellectual property is a murky one. Virtual land has no exchange value outside of the game space, unlike intellectual property-protected content. As ‘Gwyneth Llewlyn’ writes on the ‘Ownership in SL’ forum thread:

There is a difference between ownership of land on *Second Life* and the ownership of intellectual property of the *content* created on the land. The latter is better defined in the LL TOS – there is absolutely no question about who owns the content (although LL is allowed under the TOS to use that content for their marketing purposes but no more than that). But ‘land’ is not ‘content’; land is the medium that enables you to create the content’.

(<http://forums.secondlife.com/showthread.php?t=46662>)

The market economy itself is, in a very real sense, the broadest level of interface at work, informing all notions of property, propriety, creativity, and individuality that Linden Lab incorporates in their virtual world. The ownership and modification of virtual land is the *sine qua non* of authorship, creativity, and collaboration, practices that are in effect the social currency of good citizenship.

If we return to Locke, however, another important form of misrecognition becomes evident in these assertions of intellectual property. If the labor of one’s body and the work of one’s hands are one’s own, it is only when one joins this labor or work with an undifferentiated medium held in common (nature), thus removing it from this common state and annexing something one owns to it, that one properly creates property. The ‘medium’ with which game players mix or join their labor in *Second Life* is neither undifferentiated nor common; Linden ‘land’ is always already code that is owned by the corporation, a space controlled by the corporation, and one in which all authorial activities first and foremost produce value that accrues to the corporation as goodwill.

What can players actually do with a form of property that is ultimately nothing more than data, given the *Second Life* constitutional claim, that ‘All data is temporary?’¹¹ Current law, at least in North America, does not recognize the status of virtual property in most contexts (despite legal scholar Jack Balkin’s [2004] speculative optimism that it soon will). In the absence of legislation, we are left with nothing but contractual interpretation of

Second Life's constitution and this baseline assertion. This is not to say the virtual property in *Second Life* has no ontological or moral status. Rather, it is to recognize that its *legal* status is entirely due to a corporate strategy designed to increase Linden Lab's considerable goodwill. The company is free to reclaim, or 'nationalize' if you will, all property in *Second Life*, a strategy real-world liberal democratic governments are also free to pursue under the doctrine of eminent domain. But how would they dispose of it? The corporation would, in all likelihood, so completely have alienated their current user base that they would be left with no market and no market value. This is, however, a strange kind of safety; it provides no insurance for gamers for whom it has indeed become a second life.

Many prosumers of *Second Life* play the game for hours a day; the average player of online games spends 20 to 30 hours a week engaged in these virtual worlds (Yes 2004). The President of Internet Gaming Entertainment even 'estimates that players spend a real world total of \$880 million a year for virtual goods and services produced in online games' (Wallace 2005). Jason Ainsworth, for instance, plays *Second Life* four hours a day, running a virtual real estate development business that brings in enough income to pay the mortgage on his Las Vegas home (Wallace 2005). As more and more people turn to online games and gaming markets as a source of income, they will become ever more dependent on the maintenance and development of corporate goodwill. The vast majority of gamers who create this newly recognized intellectual property create content that has use, value, and meaning only within *Second Life*. Their creative labor is valued only insofar as it suits the purposes of Linden Lab and only insofar as the corporate largess represented by their constitutional amendments remains an effective strategy for building goodwill. When and if this ceases to be the case, 'all data is temporary'; a user's second life thus can be terminated, along with all the labor, time, and productive energy that has been mortgaged from the player's first life.

Assertions, negotiations, and contestations of intellectual property are, in summary, performative in the way that they reiterate a Lockean theory of property but nonetheless obscure the corporeal basis of labor and in their constitutive misunderstanding of the conditions under which the value of players' cultural activities accrue to the corporation as the accumulation of goodwill. Such performatives operate to reinforce a reductive understanding of the author as primarily, if not exclusively, a market agent. The nature of the desired activities and responsibilities of the author in a public sphere are not addressed, the author's moral interests in her or his works and the terms of their circulation are not countenanced, and neither public goods nor the public domain appear to be operative as limits to or guiding principles in *Second Life*'s digital sociality.

As a gamer it would appear that you participate in an online 'community' governed entirely by unilateral conditions dictated by the corporate publisher.

You have no political rights to participate in the establishment of the constitutional conditions that create the parameters of your second life. Like other consumers you are free to express grievances, but you can do so effectively only in circuits of interactivity controlled by the corporation itself. Even your continued access to these circuits is entirely at the discretion of the company. Goodwill, however, is a benevolent despot; there is always the possibility that the corporate owners of the game will continue to respond to your complaints by modifying the constitutional terms of the game's governance to meet your needs. Ultimately, though, we must ask, is this *your* second life or a half-life of corporate servitude in which fundamental democratic norms of political representation, accountability, and responsibility are ignored, rights of speech and assembly are truncated, and attendance to distributional inequities are unknown? If we are reassured by Philip Rosedale's comment that, 'we like to think of *Second Life* as ostensibly as real as a developing nation' (Krotoski 2005), then we can only hope that goodwill will evolve in digital contexts to accommodate virtual forms of democracy and new norms of digital social justice.

Notes

- 1 'State of Play' is one of the premier academic conferences on digital gaming in the US, bringing together scholars in law, humanities, and social sciences with intellectual property lawyers, new media artists, game developers, and gaming industry executives. It is jointly sponsored by the Berkman Center for Internet and Society at Harvard Law School, the Information Society Project of Yale Law School, and the Institute for Information Law and Policy at New York University Law School. Its proceedings are archived at <http://WWW.NYLS.EDU/pages/2396>.
- 2 The most popular MMOG as of July 2005 was *World of Warcraft* with approximately 2,000,000 subscribers; Sony's *Everquest* (to which we compare *Second Life* in terms of player creativity and intellectual property policies) had about 500,000 subscribers; *Second Life* had about 30,000, although it is one of the fastest growing MMOGs. (All figures come from <http://www.mmogchart.com>, an excellent source of data and analysis on the MMOG industry.) According to Linden Lab, *Second Life* passed the 100,000 'resident' benchmark in January 2006 (http://lindenlab.com/press/releases/01_06_06).
- 3 The value of goodwill may be enormous and figures prominently in the calculations of mergers and acquisitions. For example, in the recent merger between MBNA and Bank of America, 20 percent of the \$35 billion that Bank of America offered was considered to be for MBNA's accumulated goodwill (Talcott 2005).
- 4 Although Johnson privileges graphics, textual interfaces remain (both as a foundation for graphical interfaces and for greater customization at a deeper

level through various forms of scripting and terminal command-line interaction), parallel interfaces that grant deeper levels of access to the computer's basic systems. Even more specialized skills are needed if one is to extend the computer environment further through the authoring and coding of new applications, which requires another software application to act as its own interface (think, for example of Dreamweaver for website creation, an application that is itself a graphical interface for coding HTML and other web languages).

- 5 Banks (2005) and Nieborg (2005) add considerable empirical specificity to Jenkins' argument, although their conclusions point in different directions. Banks argues that game developers have an '(im)possible relationship with players', where the sheer pleasure and fecundity of gamer productivity represents an 'excessive, almost perverse enjoyment in the reconfiguration of boundaries and relations between producer and consumer. The fun of playing in the networks of informational capitalism, is a constitutive condition that outgrows and eludes the controlling grasp' (2005, p. 16). Nieborg is more circumspect and ambivalent in his conclusion, remarking that Epic Games easily incorporated the practice of modding into its business model through its *Unreal Tournament* gaming engine (2005, p. 19). Postigo (2003), Taylor (2002, 2006), Terranova (2000), and Grimes (forthcoming) reach conclusions similar to Nieborg to different degrees.
- 6 It is important to note that creations and chattel are not the same thing: the former involves new object/scenarios that are created in-game, the latter are objects that are created by the developers and acquired by the players through gameplay. However, the legal status of creations and chattel in terms of real-life intellectual property law may be the same (see Lastowka and Hunter [2004], 'CmdrSlack' [2005]). In games like *Quake* or *Everquest*, players sign over rights to their creations and acquisitions in order to gain access to the game. Interestingly, Castranova (2005) argues *in favor* of restrictive EULA's in order to keep the game-space a 'pure' state of play unencumbered by real-life property laws. This argument mirrors our assessment of Sony Online's strategy with respect to controlling in-game chattel transactions within *Everquest*. Castranova is providing a player's perspective on the need to maintain a consistent and predictable player experience, which, we have argued, is not only represented in *Everquest's* EULA but embodied in its interface.
- 7 In the absence of legislative activity, such issues eventually will be resolved through real-world litigation (Balkin 2004). One of the first cases to address this issue was decided in the People's Republic of China, where the court ordered stolen virtual property to be returned to the gamer who had originally owned it (Xinhua News Agency 2003). In most parts of the world, however, the relation between prosumers' creativity and intellectual property rights in such virtual goods remains subject to the constitutional conditions of governance provided by game-specific EULAs and TOSs.

- 8 The new policy is phrased as follows on the *Second Life* web site: 'Linden Lab's Terms of Service agreement recognizes Residents' right to retain full intellectual property protection for the digital content they create in *Second Life*, including avatar characters, clothing, scripts, textures, objects, and designs. This right is enforceable and applicable both in-world and offline, both for non-profit and commercial ventures. You create it, you own it – and it's yours to do with as you please' [online] Available at: <http://secondlife.com/commerce/ip.php>
- 9 In fact, Linden Lab staged a virtual public discussion in the *Second Life* game-space about the Creative Commons license which featured the appearance of Lawrence Lessig or, rather, his amazingly life-like avatar. It is not known at the time of printing whether he used a Creative Commons license in assigning the publicity rights with respect to his digitally rendered likeness. Discussion of this event can be found at http://secondlife.blogs.com/nwn/2006/01/the_second_life.html
- 10 For example, resident 'LilyBethFiltH' asserts: 'I don't believe that any one who uploads a texture they got from a website can declare themselves a 'creator' . . . If paying \$10L to load into *Second Life* is a 'creation' then it is a poor creation. [The practice] . . . is a whole moral nightmare . . . Only people who REALLY make original textures in paint programs have the right to demand copy-right laws' (<http://forums.secondlife.com/showthread.php?t=47685>).
- 11 Section 4.3 of the TOS states: 'All Data Is Temporary. When using the Service, you may accumulate treasure, experience points, equipment, or other value or status indicators and contribute to the environment ('Accumulated Status'). THIS DATA, AND ANY OTHER DATA RESIDING ON LINDEN'S SERVERS, MAY BE RESET AT ANY TIME FOR ANY OR NO REASON. ALL CHARACTER HISTORY AND DATA MAY BE ERASED IN WHICH CASE EACH CHARACTER MAY BE RESET TO NOVICE STATUS. YOU ACKNOWLEDGE THAT, NOTWITHSTANDING ANY COPYRIGHT OR OTHER RIGHTS YOU MAY HAVE WITH RESPECT TO ITEMS YOU CREATE USING THE SERVICE, ALL OF YOUR CONTENT AND ACCUMULATED STATUS HAS NO INTRINSIC CASH VALUE AND THAT LINDEN DOES NOT ENDORSE, AND EXPRESSLY DISCLAIMS (SUBJECT TO ANY UNDERLYING RIGHTS IN THE CONTENT), ANY VALUE, CASH OR OTHERWISE, ATTRIBUTED TO CONTENT OR ACCUMULATED STATUS' [online] Available at: <http://secondlife.com/corporate/tos.php>

References

- Au, W. J. (2002) 'Triumph of the mod: Player-created additions to lifeblood of the industry', *Salon*, 11 April 2002 [online]. Available at <http://www.salon.com/tech/feature/2002/04/16/modding> (August 13, 2005).

- Balkin, J. M. (2004) 'Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds', *Virginia Law Review*, vol. 90, no. 8, pp. 2243–2298.
- Banks, J. A. L. (2005) 'Opening the Production Pipeline: Unruly Creators and Enjoyment', paper presented at the *Changing Views: Worlds of Play Conference of the Digital Games Research Association*, Vancouver, B.C. [online]. Available at: <http://www.gamesconference.org/digra2005/viewpaper.php?id=78&print=1>
- Blair, M. M. & Wallman, S. M. H. (2001) *Unseen Wealth*, Brookings Institution Press, Washington DC.
- Boyle, J. (2003) 'The Second Enclosure Movement and the Constitution of the Public Domain', *Law and Contemporary Problems*, vol. 66, nos 1–2, pp. 33–74.
- Butler, J. (1997) *Excitable Speech: A Politics of the Performative*, Routledge, New York.
- Castells, M. (1996) *The Rise of the Network Society*, Basil Blackwell, Malden, MA.
- Castronova, E. (2005a) 'The Right to Play', *New York Law School Law Review*, vol. 49, no. 1, pp. 185–210.
- (2005b). *Synthetic Worlds: The Business and Culture of Online Games*, University of Chicago Press, Chicago, IL.
- Chander, A. & Sunder, M. (2004) 'The Romance of the Public Domain', *California Law Review*, vol. 92, no. 5, pp. 1331–1347.
- 'CmndrSlack' (2005) 'There's Gold In Them Thar Pixels! An Examination of Virtual Chattels and Property Rights' [online] Available at: <http://www.grimwell.com/index.php?action=fullnews&id=284>
- Coombe, R. J. (1998) *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*, Duke University Press, Durham, NC.
- (2004) 'Commodity Culture, Private Censorship, Branded Environments, and Global Trade Politics: Intellectual Property as a Topic of Law and Society Research', in *The Blackwell Companion to Law and Society*, ed. A. Sarat, Basil Blackwell, Malden, MA, pp. 369–391.
- Coombe, R. J. & Herman, A. (2004) 'Rhetorical Virtues: Property, Speech and the Commons on the World-wide Web', *Anthropological Quarterly*, vol. 77, no. 3, pp. 557–572.
- (2001a) 'Culture Wars on the Net: Intellectual Property and Corporate Propriety in Digital Environments', *South Atlantic Quarterly*, vol. 100, no. 4, pp. 919–947.
- (2001b) 'Trademarks, Property and Propriety: The Moral Economy of Consumer Politics and Corporate Accountability on the World Wide Web', *De Paul Law Review*, vol. 50, no. 2, pp. 597–632.
- Coombe, R. J., Schnoor, S. & Ahmed, M. Al Attar (2005) 'Bearing Cultural Distinction: Informational Capitalism and New Expectations for Intellectual Property', in *Articles in Intellectual Property: Crossing Borders*, ed. W. Groshiede, Mollengrafica/Intersentia, Utrecht.
- Curlew, A. B. (2005) 'Prometheus, Prosumers, Poachers and Property: New Patterns of Cultural Production in the Post-Industrial Digital Age', unpublished manuscript.

- (2004) *Oh the Simanity: Reading a Culture of Simulation through 'The Sims'*, MA Thesis, McMaster University.
- Demers, J. (2005) *Steal This Music: How Intellectual Property Law Affects Musical Creativity*, University of Georgia Press, Athens.
- Dewsbury, J.-D. (2000) 'Performativity and the Event: enacting a philosophy of difference', *Environment and Planning D: Society and Space*, vol. 18, pp. 473–496.
- Dibbell, J. (2003) 'The Unreal Estate Boom', *Wired*, 11 (01) January, [online]. Available at: <http://wired.com/wired/archive/11.01/gaming.html>
- Goankar, D. & Povinelli, E. (2003) 'Technologies of Public Forms: Circulation, Transfiguration, Recognition', *Public Culture*, vol. 15, no. 3, pp. 385–397.
- Grimmelmann, J. (2003) 'State of Play: The *Second Life* Tax Revolt' [online]. Available at: <http://research.yale.edu/lawmeme/modules.php?name=News&file=article&sid=1222>
- Grimes, A. (2005) 'Digits', *The Wall Street Journal*, (Eastern edition) 3 Mar., p. B3
- Grimes, S. (forthcoming) 'Online Multiplayer Games: A Virtual Space for Intellectual Property Debates?' *New Media and Society*.
- Hand, J. & Lev, B. (eds) (2003) *Intangible Assets*, Oxford University Press, New York.
- Hamera, J. (2006a) 'Opening Opening Acts', in *Opening Acts: Performance in/as Communication and Cultural Studies*, ed. J. Hamera, Sage, Thousand Oaks, CA, pp. 1–10.
- (2006b) 'Introduction: Engaging the Everyday', in *Opening Acts: Performance in/as Communication and Cultural Studies*, ed. J. Hamera, Sage, Thousand Oaks, CA, pp. 12–21.
- Herz, J. C. (2001) 'Learning from the Sims', *The Industry Standard*, 21 Mar., [online]. Available at: http://www.findarticles.com/p/articles/mi_m0HWW/is_12_4/ai_72886914
- Hunter, D. (2003) 'Cyberspace as place and the Tragedy of the Digital Anti-Commons', *California Law Review*, vol. 91, no. 2, pp. 438–519.
- Jenkins, H. (1992) *Textual poachers: Television fans and participatory culture*, Routledge, Chapman, and Hall, New York.
- (2003) 'Quentin Tarantino's Star Wars?: Digital cinema, media convergence, and participatory culture', in *Rethinking media change: The aesthetics of transition*, eds D. Thorburn & H. Jenkins, MIT Press, Cambridge, MA, pp. 211–230.
- Johnson, S. (1997) *Interface Culture: How New Technology Transforms the Way We Create and Communicate*, HarperEdge, San Francisco, CA.
- Krotoski, A. (2005) '*Second Life* and the Virtual Property Boom', *Guardian Unlimited*, 12 Jun., [online]. Available at: http://blogs.guardian.co.uk/games/archives/2005/06/14/second_life_and_the_virtual_property_boom.html#more
- Kline, S., Dyer-Witheford, N. & de Peuter, G. (2004) *Digital Play: The Interactions Between Technology, Culture and Marketing*, McGill/Queens University Press, Kingston, ON.

- Lastowka, F. G. & Hunter, D. (2004) 'The Laws of the Virtual Worlds', *California Law Review*, vol. 92, no. 1, pp. 3–73.
- Lee, B. & LiPuma, E. (2002) 'Cultures of circulation: The imaginary of modernity', *Public Culture*, vol. 14, no. 2, pp. 191–213.
- Lessig, L. (1999) *Code and Other Laws of Cyberspace*, Basic, New York.
- (2002) *The Future of Ideas: the Fate of the Commons in a Connected World*, Vintage, New York.
- (2004) *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, Penguin, New York.
- Leyshon, A. (2003) 'Scary Monsters? Software formats, peer-to-peer networks and the spectre of the gift', *Environment and Planning D: Society and Space*, vol. 21, no. 5, pp. 533–558.
- Linden Lab (2005a) 'What is *Second Life*: Overview' [online]. Available at: <http://secondlife.com/whatis/>
- Lister, M., Dovey, J., Giddings, S., Grant, I. & Kelly, K. (2003) *New Media: A Critical Introduction*, Routledge, New York.
- Litman, J. (2001) *Digital Copyright*, Prometheus Books, New York.
- Locke, J. (1965) *Two Treatises of Government*, Mentor Books, New York.
- McLeod, K. (2005) *Freedom Of Expression (®): Overzealous Copyright Bozos And Other Enemies Of Creativity*, Doubleday, New York.
- (2001) *Owning Culture: Authorship, Ownership, and Intellectual Property Law*, Peter Lang, New York.
- Mackenzie, A. (2005) 'The Performativity of Code: Software and Cultures of Circulation', *Theory, Culture and Society*, vol. 22, no. 1, pp. 71–92.
- Macris, A., Chau, A., Grimmelmann, J., Hollander, M., McGraw, A. & Twardowski, D. (2004) *State of Play Primer II*, New York University Law School, New York.
- Manovich, L. (2001) *The Language of New Media*, MIT Press, Cambridge, MA.
- Nieborg, D. (2005) 'Am I a Mod or Not? An Analysis of First Person Shooter Modification Culture' [online]. Available at http://www.gamespace.nl/content/DBNieborg2005_CreativeGamers.pdf
- Ondrejka, C. R. (2005a) 'Escaping the Gilded Cage: User Created Content and Building the Metaverse', *New York Law School Law Review*, vol. 49, no. 1, pp. 81–101.
- (2005b) 'Aviators, Moguls, Fashionistas and Barons: Economics and Ownership in *Second Life*' [online]. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=614663
- Postigo, H. (2003) 'From PONG to PLANET QUAKE: Post – Industrial Transitions from Leisure to Work', *Information, Communication & Society*, vol. 6, no. 4, pp. 593–607.
- Poremba, C. (2003) 'Patches of Peace: Tiny Signs of Agency in Digital Games' [online]. Available at: http://www.digra.org/dl/display_html?chid=http://www.digra.org/dl/db/05150.24073 [12 August 2005]
- Rifkin, J. (2000) *The Age of Access: The New Culture of Hypercapitalism, Where All of Life is a Paid-For Experience*, Tarcher, New York.

- Sloop, J. & Herman, A. (1998) 'The Politics of Authenticity in Postmodern Rock Culture', *Critical Studies in Mass Communication*, vol. 15, no. 1, pp. 1–20.
- Sotamaa, O. (2005) "'Have Fun Working with Our Product!': Critical Perspectives on Computer Game Mod Competitions' [online]. Available at <http://www.gamesconference.org/diagra2005/viewabstract.php?id=189>
- Streeter, T. (2003) 'The Romantic Self and the Politics of Internet Commercialization', *Cultural Studies*, vol. 17, no. 5, pp. 648–668.
- Talcott, S. (2005) 'Bank of America gets MBNA: \$35b deal to create biggest credit card issuer in US', *The Boston Globe*, 1 Jul., [online]. Available at: http://www.boston.com/business/globe/articles/2005/07/01/bank_of_america_gets_mbna/
- Taylor, T. L. (2002) 'Whose Game Is This Anyway?': Negotiating Corporate Ownership in a Virtual World, in *Computer Games and Digital Cultures Conference Proceedings*, ed. F. Mäyrä, Tampere University Press, Tampere, pp. 227–242.
- (2006) *Play Between Worlds: Exploring Online Game Culture*, MIT Press, Cambridge, MA.
- Terranova, T. (2000) 'Free Labor: Producing Culture for the Digital Economy', *Social Text*, vol. 18, no. 2, pp. 33–58.
- Vaidhyathan, S. (2004) *The Anarchist in the Library: How the Clash between Freedom and Control is Hacking the Real World and Crashing the System*, Basic Books, New York.
- (2001) *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity*, New York University Press, New York.
- Wallace, M. (2005) 'The Game is Virtual. The Profit is Real', *New York Times*, 29 May, [online]. Available at: <http://www.nytimes.com/2005/05/29/business/yourmoney/29game.html?ex=1123819200&en=2351fcc00bead9a4&ei=5070>
- Westerburg, A. (2004) 'Interview: Cory Linden on IP Issues in Second Life', *The Second Life Herald* [online]. Available at: <http://www.alphavilleherald.com/archives/000372.html>
- Wittel, A. (2001) 'Toward a Network Sociality', *Theory, Culture and Society*, vol. 18, no. 6, pp. 51–76.
- Xinhua News Agency (2003) 'On-line game player wins virtual properties dispute', December 19, p. 1.
- Yes, N. (2004) 'Hours of Play Per Week' [online]. Available at <http://www.nickyee.com/daedalus/archives/000343.php>