

# Who owns my avatar? – Rights in virtual property

## Anders Eriksson

Division of Philosophy, Royal Institute of Technology, Stockholm  
Teknikringen 78 B  
100 44 Stockholm  
0046-8-7909528  
sredna@kth.se

## Kalle Grill

Division of Philosophy, Royal Institute of Technology, Stockholm  
Teknikringen 78 B  
100 44 Stockholm  
0046-8-7909528  
kg@infra.kth.se

## ABSTRACT

This paper presents a framework for discussing issues of ownership in connection to virtual worlds. We explore how divergent interests in virtual property can be mediated by applying a constructivist perspective to the concept ownership. The simple solutions offered today entail that a contract between the game producer and the gamer gives the game developer exclusive rights to all virtual property. This appears to be unsatisfactory. A number of legitimate interests on part of both producers and gamers may be readily distinguished. More complex distributions of rights would allow many of these interests to be consistently respected.

## Keywords

Virtual worlds, online games, property rights, ownership, conflicting interests.

## INTRODUCTION

Virtual property is an important area of study for at least two reasons: First, virtual ownership has far-reaching consequences in the real world, including extensive economical consequences. Second, there is no agreement and no established practice regarding rights to virtual objects.

Virtual worlds, where hundreds of thousands of people engage in thrilling scenarios, are a relatively new arena for social interaction. These environments are both persistent and dynamic, something that is fundamental to the game-experience as well as to the economic systems within the virtual worlds. To a large and increasing group of people virtual worlds are important sources of emotional and social well-being. The average player spends almost 20 hours a week in these environments. [3] The trade with virtual property is constantly increasing and involves astonishing amounts of money. During a two-week period in April 2004 the value of the trade on eBay for the game Ultima Online reached 156 857 US\$. [4]

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The extensive trade shows that many players treat their virtual property as if it were their private property. At the same time many license agreements explicitly state that all rights belong to the game developers. In the absence of formal regulation, most game producers try to acquire as extensive rights as possible, hoping that future ownership disputes will be settled in their favor and that the gamers will accept this. E.g., before playing *Star Wars Galaxies*, you must grant Sony Online Entertainment "a universal, perpetual, irrevocable, royalty-free, sublicenseable (through multiple tiers) right to exercise all rights of any kind or nature associated with your Content". [9] Evidently, there is a serious conflict of interest.

This question of virtual ownership may at first seem quite abstract, yet sooner or later one of the game-companies will start to lose money and may then shut down their virtual world. Should this happen, virtual property worth millions of dollars would instantaneously vanish. Players who have spent several years in the game and could have sold their virtual assets for hundreds of dollars would face a considerable financial loss. [11]

Maybe the best known conflict of interest in the area so far is *BlackSnow Interactive v. Mythic Entertainment, Inc.* BlackSnow Interactive was a company in California who hired unskilled Mexican laborers to develop high-level characters by regular gaming. BlackSnow later sold these characters for a decent profit. Mythic, the producer of the game played by BlackSnow's laborers, found out about the enterprise and shut down all BlackSnow-related accounts, claiming infringement of the license agreement. BlackSnow, on the other hand, sued Mythic for unfair business practices. Unfortunately, the opportunity to try the relevant rights and interests in a court of law vanished when BlackSnow found itself unable to continue the process due to economical and legal problems unrelated to the lawsuit.

At the moment there is little guidance as to how conflicts of this sort should be solved. This paper continues the work in *Laws of Virtual Worlds* [6] where the authors established that virtual property interests are indistinguishable from real world property interests, yet provided no answer to the question of how these interests should be weighed. Richard Bartle has also considered the issue and concluded that legislators will sooner or later have to take a stand on virtual trade and that they should do so in favor of the game-producers. [1]

## BACKGROUND

Within the utilitarian tradition in moral philosophy, it is a well established practice to view property rights as social and legal conventions that should be evaluated according to how well they contribute to the general welfare. [2] This instrumental approach to property has led to the development of theories about ownership as a bundle of rights. One need not, however, endorse the normative claim about the general welfare in order to accept the bundle analysis of property. Henry Sidgwick's provides one early analysis of property as composed of three rights: a right to exclusive use, a right to destroy and a right to alienate. [8] Sidgwick's account has been followed by numerous alternative accounts, the most influential of which is Tony Honoré's list of eleven components of ownership: The right to possess, the right to use, the right to manage, the right to income, the right to the capital, the right to security, the incident of transmissibility, the incident of absence of term, the duty to prevent harm, liability to execution, and a residuary character. [5]

Sidgwick and Honoré attempt to account for the content of a complete or maximally extensive ownership. But in practice (as they point out) not all cases of what we call ownership include all of the listed rights. Depending on the local legislation, you may not be allowed to decorate or refurbish your house the way you like, you may not be allowed to destroy the bills in your wallet, and you may not be allowed to bequeath your belongings the way you want. Still we say we own these things. Other things that we have some component rights to, such as a flat we rent, do not qualify as ownership in the common language. Honoré seems to settle for a Wittgensteinian interpretation of family resemblance between different instances of ownership, with no core component. In practice, however, the right to sell (by Honoré included in the right to capital) usually draws the line between ownership and rights without ownership.

Ownership is thus not a fundamental legal relationship in itself, but rather consists in combinations of legal rights of the very same kind as less extensive, non-ownership bundles. Which bundles should qualify as ownership is a terminological matter only. Bundles of rights can be legally construed in many different ways and new bundles are continuously created to handle new challenges presented by technological change or innovative economical solutions. Thus such immaterial pieces of property as shares, options, patents and copyrights have become common to law and practice. By adopting a constructivist perspective on ownership, the legitimate interests in virtual property can be analyzed in their own right, without relying too heavily on inadequate notions of ownership.

## **OWNER INTERESTS**

Richard Bartle claims that gamers, unless the game producers state otherwise, merely pay the monthly fee to manipulate data in a database, without acquiring any property rights to the data they are manipulating. According to Bartle, gamers can legitimately claim that certain aspects of that data belong to them, but that claim does not imply ownership. The gamers' virtual property is not theirs to sell. Bartle continues to argue that one can "rent a house, redecorate it with the full permission of the owner, live in it for five years, fill the garden with flowers, insulate the loft, do a whole bunch of other things", without acquiring the right to sell the house. [1]

To infer from these arguments that gamers shouldn't have any right at all to virtual property would be jumping to conclusions. Whether gamers should have a right to sell their virtual belongings or not might determine whether or not we should call their interest in these belongings "ownership". But regardless of how this matter is dealt with, there are other interests, separable from those in trading, which might deserve legal protection. Rather than confronting the matter as an either/or question of ownership, it should first be considered what interests are involved in the matter and what normative force they carry. Then, with the complexities of ownership in mind, a legal solution should be found.

In our interest analysis we have focused on the two main interest groups, game producers and gamers.<sup>1</sup> We have found a number of different arguments that these groups use to justify their

<sup>1</sup> With game producers we mean that majority of game-companies who explicitly state that they forbid virtual trade, i.e. Sony Online Entertainment (SOE) in their role as producer of Star Wars Galaxies. Since the beginning of 2005 SOE has taken another stand on their game Everquest II.

right to virtual property. Two main interests are discernible in connection to the game producers:

1. *Subscription interest* – virtual trade may decrease a game producer’s income from subscriptions. If new players buy advanced characters for real money they won’t have to spend time in the game (which they consequently would have to pay for) advancing their own avatars. The subscription interest is also affected by the fact that the game producer may get a bad reputation by letting people with more money than time buy themselves into the game, resulting in gamers leaving the virtual world.
2. *Control interest* – developers have an interest in remaining in control over their creation. In part, this may be a purely creative interest, quite separable from the subscription interest. Often, producers wish that their virtual world should remain a game only. The recognition of ownership rights in the virtual world of their game may thus conflict with their wish to control that world. Producers therefore try to establish norms implying that trade in virtual property with real money should not exist.

The gamers have the following interests:

1. *Fairness interest* – many gamers wish for the game to be played in accordance with its original purpose. They do not want other players to be able to obtain success in an “artificial” way (i.e. buy virtual objects for real money).
2. *Labor interest* – this interest represents the thought that you own the product of your labor, for instance the virtual objects produced in the game. Time and labor spent on a game is not principally different from time and labor spent on more concrete things such as handicraft. That the product of one’s effort is virtual does not automatically preclude rights in that product.

These are all legitimate interests in the sense that they do not obviously contradict more profound interests and that they are based on established moral practices – i.e. the right to profit from one’s endeavors, the right to control one’s creation, the right to be treated fairly and the right to compensation for work done. A utilitarian stance on the issue would be to try to comply with a maximum number of these interests, as part of a more general search to maximize utility. Some of the interests may, however, gain stronger support from other moral theories such as Locke’s theory of ownership. In the following we will not consider this possibility, but rather assume that all the listed interests should, if possible, be respected.

### **SOME SUGGESTIONS**

With the constructivist perspective on ownership in mind, the listed interests are in the following regarded in relation to a number of important rights. These rights are inspired by the components of ownership put forth by Honoré, but modified to serve our present purpose. The suggestions may be of interest in their own right, but they also serve to illustrate how allowing for more

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They are now hosting an auction service for those who choose to play on “exchange-enabled” servers. SOE emphasizes that this does not imply ownership of the virtual assets. [10]

complex solutions could satisfy more interests on the part of both gamers and producers.

### *Ownership of non-virtual property*

The following suggestions concern ownership of established forms of property such as (material) computer servers or (immaterial) game-producing companies only indirectly. It is uncontroversial that game producers are the owners of their servers and that stock holders are the owners of the companies. Depending on the regulation of rights in virtual property, however, the conditions of such ownership are affected. This interdependence between different kinds of ownership is of the exact same kind as the interdependence between on the one hand your right to use a CD that you have bought and on the other hand copyright law. There is no question of who owns the CD, the only question is what ownership of the CD *means*, in light of the intellectual property rights that, so to speak, overlap with your CD ownership.

### *The right to manage virtual worlds*

It is essential to the practice of game design that game developers are able to modify the game to guarantee its function. Also from a gamer perspective, game producers are fundamental to the game's creation by providing the necessary equipment and competence to keep the game running. Producer control over virtual worlds is also supported by legitimate interests in profit.

Gamers, on the other hand, have legitimate interests in those bits of the virtual world that are their avatars and the belongings these have acquired in the game. Now these latter interests may be respected without grave limitation of producer control. Gamers have no interest in the world remaining unchanged, but only in their avatars keeping their relative status and function within the game. Respecting gamer interest in fair treatment and their labor interest as it regards management of property, would not seriously circumscribe the options for development and management of the world at large.

An analogy can be found in the relationship between the rights of the local government to develop and manage areas under their jurisdiction, and the rights of land and house owners in that area. The government may allow or disallow traffic around and above privately owned land, it may regulate radio frequencies etc. Such management affects the land, yet is consistent with a strong right of the land owner to control *her land*. In virtual worlds, much greater changes may be made than in the real world. Houses may start to decay faster, new areas may be inserted between old ones etc. This may all be consistent with gamers' right to manage their avatars. As long as the changes affect avatars in proportionate ways, gamers' interests are respected.

Where exactly the line should be drawn is a difficult matter and the lack of precedence makes it harder to picture how conflicts may be solved. Yet there are in principle no obstacles to balancing the interests of gamers and producers in a way that satisfies most of the interests involved.

### *The right to the capital*

One of the most discussed questions concerning virtual property is the selling of virtual objects and avatars. Such trade transforms virtual property into real money. The gains are thus quite real (though most often immaterial). Here the subscription interest of the producers and the labor

interest of the gamers may be in more direct opposition than in the case of management.

When discussing the right to capital one easily discovers its complex nature – estimations of the consequences of giving gamers a right to sell their virtual resources is associated with many uncertain factors. Virtual trade is a new phenomenon and we have not been able to find any studies discussing how this trade influences online games or subscription rates. Lacking empirical data, no conclusion can be made as to whether the subscription interest is in fact violated by trade in virtual property. One way to handle the immediate issue would be to appeal to a general principle of liberty, saying that the burden of proof lies with those who champion prohibitions to show that there are in fact negative consequences, or that such consequences are likely to be forthcoming.

It could be argued that even though subscription interests are not threatened by trade, the legitimate interest in creative control is. This claim could be given two interpretations. First, the internal functioning of the game may be affected by e.g. a lack of beginners, as a consequence of widespread trade in advanced characters and equipment. Should this be an important enough effect on the game, in relation to other unforeseen effects of gamer behavior, the interest in creative control does provide an argument against virtual trade. Again, the matter hinges on empirical circumstances that are not well researched. A second interpretation is that what is affected is not the internal functioning of the game, but rather the institution of gaming more generally, including how individual gamers enter the game – whether as beginners or as advanced characters. This interpretation is less convincing, considering the many ways in which games and other products may be used by consumers. Restrictions of use must be motivated by some further consideration, rather than the mere fact that producers did not intend the product to be used in a certain way.

#### *The right to security and the duty to prevent harm*

If gamers are legitimate managers of their virtual property (and should possibly have the right to trade in it as well), these rights should remain during the foreseeable future. I.e. gamers have a right to security in their partial ownership. Consequently, the game producer should not be able to deprive the gamers of their assets in an arbitrary way. This right can be limited in different ways. If cheating or other misuse is discovered the right to security can be restricted by the game company. In other words, a duty to prevent harm can be imposed on gamers and the right to punish violation of this duty can be attributed to producers. This would admittedly grant the producers the role of both policing and judging offences, but gamers who have been unfairly treated may still appeal to the general legal system for redress.

Parallel to this duty of the gamers and right of the producers, there should be a responsibility on the part of producers to protect the virtual property of gamers and compensate them for unwarranted damage or loss. This is exactly what happened to Li Hongchen, a player of *Hongyue*, who became stripped of his virtual assets due to the fact that another person hacked into the game company's servers and stole Li's virtual biochemical weapons. The Beijing Chaoyang District People's Court decided that Arctic Ice, the game producer, should compensate Li for the loss. [7] While the value of virtual assets continuously increase it becomes more and more important that the owner of a virtual object experiences a certain amount of confidence in

her ownership.

### *Other rights*

In addition to the ownership components discussed above, there are several others that may be of considerable interest in the future. During the autumn of 2004 an auction of a piece of land in the game Project Entropia resulted in a winning bid of 26 500 US\$. Along with this purchase follows a number of rights for the buyer, e.g. the option of dividing the land mass into lots and selling it in parts or letting other gamers stay on the island and hunt for a fee. Project Entropia is an exception among producers in that they do not oppose trade in virtual property. The mere existence of this kind of relationship, however, shows that there is nothing inherently strange or wrong with granting players the right to generate income from their virtual property.

In connection to the right to sell, there are other kinds of transmission of rights. In the future, with virtual trade having been more generally accepted, people may want to bequeath their virtual assets. Similarly, virtual assets may be used for distraint. If this sounds reasonable, that intuition may support a more general possibility to alienate virtual property.

## **CONCLUSION**

Our brief analysis of interests and the resulting suggestions of division of ownership rights are but an example of how the complex situation in regard to virtual property may be handled. Further inquiries are called for in order to prepare the ground for future solutions to conflicts of interest. Such conflicts will sooner or later demand attention from court rooms and legislators.

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