

The future of the Internet may be in 3-D. And lawyers, law schools, and corporations are now involved.

By Chuleenan Svetvilas



Real Law in the Virtual World

**At 8:30 a.m.
on Saturday,
October 20,**

Benjamin Noble was in the bar association's conference room arranging a tray of doughnuts, muffins, and bagels alongside the cappuccino machine. "I'm not only the president, but I also do setups," joked Noble, who noted that a reception would follow the bar's monthly meeting.

As the members began to arrive in the sleek, 48-seat auditorium, Noble—a figure of medium height with brown, tousled hair—waited by the floor-to-ceiling windows that revealed a lovely view of the harbor below. He and a few other members wore conservative suits of black or gray. One broad-shouldered man came dressed in a red Che Guevara T-shirt and stonewashed jeans. And a woman with wild black hair really stood out in an orange tutu, a black short-sleeved top, thigh-high black stockings, and high-heeled shoes.

There was no elevator in the new Law and Justice Center, so some members had trouble

Members of the Second Life Bar Association attend a monthly meeting wearing a variety of looks. "Reporter" Manda Moran (center in black jacket) stands with her back to the camera.

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figuring out how to teleport to the sixth-floor auditorium. All it really took was a few mouse clicks. For this was a meeting of the Second Life Bar Association (SLBA), a virtual environment run by San Francisco-based Linden Lab. The online meeting was conducted in text using the chat function.

Benjamin Noble is the avatar (graphic character representation) of Benjamin Duranske, a 33-year-old graduate of UC Berkeley's law school who last year founded Virtually Blind, a virtual-world legal blog. Duranske worked as an intellectual property litigator in San Francisco before relocating to Idaho. He joined Linden Lab's virtual world of Second Life in June 2006, and, after encountering other attorney avatars, created a bar association. Since its first meeting in December 2006 the SLBA has grown to more than 200 members. "I didn't want this to become a personal vanity project," says Duranske, whose term as bar president ends this month. "We held elections, so I would only be an officer for a year."

Noble began the bar meeting by announcing that a reporter, Manda Moran, was in the room. Manda is my onscreen avatar. I had emailed Noble a few days earlier to ask if it would be OK for Manda to attend the meeting and take a few screenshots.

Manda was "born," as Second Life likes to say, last summer. I chose a female form and spent a few hours on her appearance, then she was teleported to Orientation Island. I used the arrow keys on my computer keyboard to make her walk, and to make her fly I clicked my mouse. At birth Manda automatically wore jeans, a T-shirt, and sneakers, identifying her as a newbie. So I later changed her shirt color and got her some free clothes.

My avatar sat toward the back of the auditorium, while I sat in front of my computer screen, startled that Noble had introduced me/her. "Who are you with, Manda?" asked Noble, who knew my identity in real life but wanted to inform the others.

"I'm an editor at CALIFORNIA LAWYER," I typed quickly.

"We're happy you're dropping in," replied Noble.

Manda thanked him and sat back to observe. I was participating in a virtual world, a three-dimensional place in cyberspace where users can interact through their avatars, which Linden Lab defines as "your persona in the virtual world." Residents can join any of the various communities that have formed "in-world," participate in events, shop for virtual clothes, attend classes offered by real-life universities, or become a member of a group, such as the SLBA. In its present form, Second Life is a combination of hyped-up chat room, social network, and video game. But its possibilities as an alternative reality seem endless.

Virtual worlds began more than 30 years ago as computer games that emulated aspects of Dungeons & Dragons. These games evolved into "massively multiplayer online games," such as *The Sims Online* (2002) and *World of Warcraft* (2004), where thousands of people play and interact through voice or text in three-dimensional graphic settings. These are "persistent environments," which means that when you log

off, the game continues with other players, and things may change dramatically while you are away.

Today, millions of people spend time in virtual worlds—and they're not just playing games. Users "have formed economies and societies within these worlds that have real-world implications for the way we live, work, and play," says Dan Hunter, associate professor of legal studies and business ethics at the Wharton School at the University of Pennsylvania and cofounder of Terra Nova, a virtual worlds blog.

"One of the major draws of virtual worlds is the 'embodiment' they provide," says Nicolas Ducheneaut, a scientist at the Palo Alto Research Center. "Instead of a simple string of text, users can project themselves into a much richer, graphical avatar that can grow and change over time. This anchors their identity in a much stronger way than what is possible elsewhere on the Internet."

Ducheneaut says that in the near future Internet users will be able to bring other aspects of their identities into their avatars. "An obvious way to accomplish this would be to merge a social-networking site, such as Facebook or LinkedIn, with a virtual world," he says. "I believe we will soon see that kind of consolidation."

Philip Rosedale, founder and CEO of Linden Lab, agrees there's more to come. "Maintaining a virtual presence may become ubiquitous in a few years, as cell phones and email addresses are today," he says. "We'd like to be there to facilitate that transition."

Clearly, virtual worlds are no longer the exclusive realm of fantasy or Hollywood—think *Tron*, Disney's 1982 sci-fi film, or *The Matrix*, Warner Bros.'s 1999 hit. Virtual worlds are "the next-generation cyberspace," says Beth Simone Noveck, a professor at New York Law School and founder of the State of Play: Law and Virtual Worlds Annual Conference.

Noveck contends that three-dimensional, interactive environments will change the law, as well as how the law will be brought to bear on business, social, and political life online. "People are appearing with new visual identities and likenesses, trademarked brands are appearing in virtual shop windows, and ownership of avatars [is] being settled in divorce and probate proceedings," she says. "The law is having to grapple with questions that are similar to, but not all the same as, what we've confronted in two-dimensional cyberspace."

I first learned about Second Life in *Business Week*. Anshe Chung, Ailin Graef's avatar, was featured on the May 2006 cover as a "cyberspace real estate developer" who made real money buying, developing, and selling virtual property. Six months later Chung announced she had a very real net worth of more than \$1 million from her business.

I was intrigued by the idea that people were purchasing property, as well as making and selling furniture and clothes, in Second Life. Yes, real money is exchanged in this virtual space. Linden dollars, the Second Life currency, can be

converted to real U.S. dollars at LindeX, the Linden dollar exchange. (In November the exchange rate hovered between 265 and 266 Linden dollars to the U.S. dollar.)

It all seemed entrepreneurial and fun. Some people actually make a living in Second Life; roughly \$1 million in virtual transactions occur every day. Linden Lab provides the platform, and the residents of Second Life create the content. (See the profiles, starting below.)

Then I started reading about all the other things going on in Second Life: sex (animation programs allow avatars to get

intimate), child pornography (avatars were exchanging photos), and gambling, which the FBI investigated and Linden Lab banned last summer. But Manda Moran has stayed away from the red-light areas. I'm not ready to encounter any naked avatars on my computer screen.

Some of my CALIFORNIA LAWYER colleagues initially disparaged Second Life as a game for people who lacked a first life. But with 9.6 million avatars, according to Linden Lab, Second Life has attracted a lot of media attention. As of September there were 6.7 million unique "residents" and



ATTORNEY

Geri Kahn, 44, San Francisco

AVATAR

Geri Kuhn



I was on a Southwest Airlines flight and read an article about Second Life in *Spirit* magazine," says Geri Kahn, an immigration attorney who joined the virtual world last spring. "I thought it would be great for business, so I opened an account."

Learning that 40,000 people

were online on any given day, Kahn surmised there must be opportunities in so many people meeting each other. "The average age in Second Life is 35, so I anticipate

people spending a lot of time there and meeting each other from different parts of the world. If any of them fall in love and get married, I could help them with their visas."

Kahn soon found a group of in-world lawyers and joined the Second Life Bar Association, as well as a Second Life synagogue and a Jewish city, Ir Shalom. Then she busied herself taking classes on how to move around in Second Life, avatar makeovers, and buying virtual real estate. She wanted an avatar with long hair (her own is shorter) and a nice body. "But I wanted it to be professional, not slutty," Kahn says. She calls her avatar Geri Kuhn.

After deciding to open an office in-world, she says, she found the same real estate challenges

had placed a classified ad in Second Life.

"I knew I wanted to be on the beach, and I didn't want any obscenity or people running around nude," say Kahn. She then hired someone to design a two-story office with a Southwestern adobe look. She paid the designer \$150 through an online PayPal account, and in ten days had an office she was very pleased with. To announce her office opening, she hired a party planner who designed an invitation and provided a dance floor, food, and cake.

So far she's had one legal consultation. "We arranged a time to meet in my virtual office," Kahn recalls. "He came to the meeting as a furry animal wearing a suit." She admits that at first it was a little difficult to take the client seriously, but she understood that he had real-life immigration issues. In the end, nothing came of the meeting. She didn't charge a fee for the consultation, but says that she will from now on. "In real life I charge \$125, which I deduct from the attorneys fee for the work [if I'm hired]," Kahn says. "I need to charge enough in Second Life to weed out people."

Now Kahn, who is vice president of finance in the Second Life Bar Association, is figuring out how to expand her virtual practice. "Just like in real life, you have to have marketing," she says. "My goal is to teach a class [in Second Life] with an immigration attorney from England."

she has encountered in real life. "I tried Coldwell Banker, but the plots they had available were too small," Kahn says. She eventually bought virtual land from someone who

approximately 500,000 active users per month. But only 30,000 to 40,000 people are logged on at any time, and some early corporate participants, such as Wells Fargo and Starwood Hotels & Resorts Worldwide, have left Second Life.

These days, real-life corporations, universities, government agencies, and medical centers are venturing into virtual worlds to hold classes, conduct research, and provide training. Authors make appearances to promote their books, including

Judge Richard A. Posner of the Seventh U.S. Circuit Court of Appeals for *Not a Suicide Pact: The Constitution in a Time of National Emergency*, and Stanford Law School professor Lawrence Lessig for *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*.

In November, CNN launched a Second Life bureau, which will distribute both real-life news and resident-generated content. Reuters assigns a full-time reporter to the virtual beat. Coca-Cola hosts Second Life events and contests, and Coldwell Banker offers virtual real estate to avatars. Toyota sells virtual versions of its Scion brand cars in a Second Life showroom. And last year H&R Block opened a virtual storefront offering free tax advice and access to its tax preparation products.

In addition, IBM staffs the sales reception area of the Second Life business center 24 hours a day, five days a week. It works with Linden Lab and other companies to create interoperability between virtual worlds and to make avatars portable. Rivals of IBM such as Dell and Sun Microsystems have also launched Second Life presences.

At Cisco Systems, "We are using our campus in Second Life as a business and educational tool about the role of networking in our everyday lives," says Van Dang, vice president and deputy general counsel. "It's another opportunity for our business to interact with our customers in a fun and interactive environment."

Cisco's clients in Second Life and other virtual worlds receive training and education, and the company gets real-time customer feedback. With Cornell

University and Metaversed, a blog on virtual worlds, Cisco is working to create the Metaverse Market Index to track virtual-world subscribers and their economies.

representation of the exterior of Austin Hall."

Wu sees virtual worlds as "a natural extension of Web 2.0 and social-networking applications." He believes the underlying technologies may provide the basis for what the mainstream Web becomes. "I see these technologies as the first step toward a more immersive virtual-reality experience, using information technology," he says. Wu, secretary of the ABA's Sci-Tech Law section, hopes eventually to chair it and focus on virtual worlds, multiuser online games, artificial intelligence, and robotics.



ATTORNEY

Stephen Wu, 45, Los Altos

AVATAR

Legal Writer



"When I was a teenager, I wrote my own games in BASIC, and I modified games," says Stephen Wu, a partner at Cooke Kobrick & Wu and a former in-house attorney at VeriSign.

He joined Second Life about a year ago after reading books and articles about virtual worlds and virtual reality. "I thought this was going to be an important area for the ABA Sci-Tech Law section to get into," says Wu. "With the

increases in computer power and the ability of computers to do things, I wondered, what were the legal implications of all this?"

Wu's avatar, Legal Writer, soon joined the Second Life Bar Association and attended a few meetings. He also visits Berkman

Island, a Second Life site where Harvard Law School's Berkman Center for Internet and Society holds classes. "I spend a lot of time in the Berkman area," says Wu, a Harvard Law School graduate. "I marvel at how they were able to get an accurate

Last spring the *Wall Street Journal* published an article about companies—including Microsoft, Sodexo Alliance, and Verizon—that interviewed job applicants at virtual career fairs in Second Life. It was cheaper than holding a real job fair, and it brought the participating companies some media attention.

While virtual world residents are having fun, they are also doing business. Last April, analysts at Gartner stated: “By the end of 2011, 80 percent of active Internet users will have a ‘second life,’ but not necessarily in Second Life.” If that prediction proves accurate, it’s time for lawyers to pay attention.

W

hatever it is that’s going on in the virtual world, even the American Bar Association is interested. The ABA’s Section of Intellectual Property Law and Section of Science and Technol-

ogy Law have both formed committees on virtual worlds and online games. At the Second Life Bar Association meeting



AVATAR

Cat Galileo

LAW LIBRARIAN

Kate Fitz, 40, Sacramento



Kate Fitz, a librarian at the Sacramento County Public Law Library, started playing EverQuest with her husband in 1999. “I knew he was a gamer before I married him,” says Fitz. “We played off and on and were involved in the EverQuest subculture.”

She first encountered references to Second Life in various library blogs. “Being an old gamer, I wanted to check that out,”

recalls Fitz, a former practicing lawyer. She joined Second Life in June 2006, shortly after the Alliance Library System created a library in Second Life.

“The library project began as Info Island, and now it’s up to more than 36 islands, an information archipelago that’s open to everyone in the library and education communities,” says Fitz. “The ALS has a library group on Info Island and staffs a reference desk. They

Manda attended, bar president Noble announced that the ABA’s Sci-Tech Law section would help SLBA offer CLE credit for bar events. The virtual members were impressed.

This spring the Sci-Tech Law section will publish *Virtual Law: Navigating the Legal Landscape of Virtual Worlds* by Duranske, avatar Noble’s creator. “My book will be a practical guide for legal practitioners and scholars,” says Duranske, who cochairs the section’s Virtual Worlds and Multiuser Online Games Committee. “It will cover copyright, trademark, criminal law, civil procedure, and agreements between users in virtual worlds.” Because virtual law is so new, very little case law exists; he likens it to the early days of the Internet.

Elite law schools are among Second Life’s early adopters. This spring, for instance, Stanford Law School will offer a seminar on virtual jurisdictions. “The class will discuss what a court system in the virtual world would look like, and try to implement it,” says Lauren Gelman, executive director of Stanford’s Center for Internet and Society. Gelman plans to hold some discussions in Second Life and have residents participate. “For courts to work in Second Life, we would need the support of the residents,” she says. By the fall term, she expects law students to begin hearing cases in Second Life.

Gelman is also dean of New York Law School’s State of Play Academy, which holds classes on the law in There.com, a virtual world created by San Mateo-based Makena Technologies. “One of the driving ideas behind the academy is that you don’t have to go to three years of law school to know about

Fitz also maintains a website, Second Life Lawspot, that includes the Galileo Law Directory, a listing of in-world attorneys and legal organizations. A disclaimer states: “No verification of claimed credentials has been conducted. Listings are based entirely on in-world representation. Discuss credentials before hiring or sharing confidential information with anyone.”

Fitz estimates that she spends 10 to 20 hours a week on her Second Life activities, and says she only logs on when she’s at home. “This whole project is personal and educational,” she says. “Even though I don’t have a huge stream of visitors, it’s a great learning experience.” She intends to open a branch library on Depo Island, the Second Life business park where U.K. law firm Field Fisher Waterhouse is located.

get questions mostly about how to do things in Second Life.”

Realizing that Second Life lacked a law library, Fitz obtained an area on Info Island and called her collection the Lawspot Library. Lawspot now occupies one floor of the Bell Library, a multi-subject facility on Info Island. “It has links to the congressional pages and all kinds of free online resources that take you to the regular Web,” says Fitz.

the law,” she says. “It’s just a way to give people more information.” Classes are open to anyone who creates an avatar.

New York Law School has been at the forefront of virtual-world experimentation. Professor Noveck held the first State of Play Conference in 2003, and the following year she launched Democracy Island in Second Life. “It was originally designed to be a way to try out new methods of citizen participation in rule making,” Noveck says. “One project is called Landing Lights Park, which re-creates a park in Queens, New York. People can participate in the political process of designing it, moving benches around, and testing where they want things to go.”

This fall the law school plans to implement a virtual-world mentoring program. “Each student will have an alumni mentor,” Noveck explains. “A virtual alumni mentoring office will make it easier for the alumni to give back to their school by

being available when it’s convenient for both mentors and students, regardless of where they are located. The alumni avatars can have ‘virtual office hours’ that allow students to drop by.”

Harvard Law School’s Berkman Center for Internet and Society is also a participant in Second life, holding classes on Berkman Island. The law school recently held in-world moot court trials, with Second Life residents serving as mock jurors. Other Berkman Center classes, such as CyberOne: Law in the Court of Public Opinion, and Introduction to Virtual Worlds, are taught in conjunction with Harvard’s Extension School.

So far, real-life law firms have been slow to join in. In early 2007 London-based Field Fisher Waterhouse became the first large firm to open a Second Life office, a project spearheaded by a partner in the firm’s Technology Law Group. And during National Pro Bono Week in November, 1,600-lawyer firm Lovells hosted an exhibit in Second Life to promote its work. A number of sole practitioners participate, mostly out of curiosity. Many are SLBA members, and some have hung out shingles. Others are trying to generate real-life business, and a few use their offices strictly as meeting places. Many in-world legal disputes are too small to warrant litigation in the courts, but alternative dispute resolution could provide a system of legal accountability. (See “The Law West of Reality,” page 25.)

“Virtual worlds is still a developing practice area,” says Cristina Burbach, an associate at Fried, Frank, Harris, Shriver



AVATAR

Little Gray

ATTORNEY

Stephen T. Davies, 41, Eureka



I joined Second Life in October 2006 because I thought it would be a good way to advertise my real-life law practice and collaborate with other attorneys,” says Stephen T. Davies, a litigator. “Also, more people are online in Second Life than live in Eureka, so I wanted to explore the possibility of helping in-world residents resolve disputes with other residents.”

At first, Davies advertised his practice in Second Life. When no one responded, he realized that few in-world communities had courts, and residents wouldn’t be

looking for lawyer avatars to settle real-life disputes. “It dawned on me that promoting something like the American Civil Liberties Union would be a better way to advertise my business,” says Davies, who is a board member of the ACLU’s Redwood Chapter.

In November 2006 Davies established an in-world associate chapter called the Second Life Avatar Civil Liberties Union, a name indicating that its reach isn’t limited to U.S. civil rights issues. He maintains an information kiosk on Commonwealth Island, where organizations such as Greenpeace

also have a presence. “People visit every day,” says Davies. “We have protest signs that we either give away or provide for a nominal amount.”

Davies’s avatar, Little Gray, has found work in Second Life. He handles mostly transactional issues, such as reviewing employment contracts for people who provide goods and services to other residents. The money at stake in resident disputes is usually so small that it doesn’t make sense for Little Gray to litigate, he notes.

Clients sign retainer agreements and pay Little Gray in

Linden dollars, the Second Life currency convertible to U.S. dollars at the LindeX currency exchange. To review a contract for developing content and negotiating with a contractor, he was paid 23,000 Linden dollars, or about \$86. His retainer fees amount to about \$2,400 a month.

Little Gray’s alien appearance doesn’t seem to adversely affect his in-world legal work. “I selected an alien because I had played other online role-playing games in the past,” Davies says. “I didn’t want to anthropomorphize my avatar.”

A self-taught programmer, Davies also has a Second Life business creating and selling type scripts, such as communication tools or programs that track in-world trade volume. His most popular item is a mailbox that avatars can use to send messages to other avatars. The money he gets from those products covers his monthly account fees.

& Jacobson in Washington, D.C., and a cochair of the ABA Sci-Tech Law section's virtual worlds committee. "Law is always an extension of what went on before," she says. "The issue with virtual worlds is *how* you extend it. Is property law extended in this case? Nobody really knows."

Burbach began playing World of Warcraft two years ago. "All of my friends are IT people, and they were really into it," she says. "Then I started reading Terra Nova and got really fascinated with this uncharted territory. It's such fertile ground for economic experimentation." Burbach says she wonders whether, in the near future, it will be necessary to list her Second Life and World of Warcraft avatar names in her bio.

Crossing between the real and virtual worlds, however, can be tricky. Sean F. Kane, an IP attorney at New York's Drakeford & Kane and another cochair of the ABA's virtual worlds committee, says he doesn't practice law from his Second Life office because of concerns over regulatory issues such as legal advertising and the unauthorized practice of law.

"The virtual world is still a nascent area," Kane says. "So I have chosen not to push the boundary until there is more guidance." He notes that because the virtual world encompasses state and national boundaries, it isn't clear which licensing jurisdiction has authority. "It may be where I am, which would be OK," he says. "But it may be where the server is, or where other individuals reside, which is problematic."

Kane says he expects significant developments in virtual-world technologies in the next five to ten years. "Virtual worlds are where the Internet was in the 1990s," he says. "The differing technologies being tested will likely cause a paradigm shift in the way we access information for business, social, and individual use."

If the future of the Internet includes virtual worlds, lawyers eventually will be involved. And that future may not be too far away. Last fall Google was rumored to be planning its own virtual world, a 3-D social network that would combine existing technologies such as Google Earth and Google Maps.

As more people become accustomed to virtual worlds, professionals increasingly may have to equip themselves with an avatar to be represented at meetings. And soon attorneys may list an avatar, along with an email address, on their business cards. **CL**

THE LAW WEST OF REALITY

Most disputes between avatars in Second Life so far have concerned micro-transactions that aren't worth pursuing in real-life court. Avatars typically have to work out problems among themselves, though some people have sought to establish alternative dispute resolution options. The problem is a lack of in-world enforceability.

One attempt to correct that is the e-Justice Center, which the Portuguese Ministry of Justice in Second Life and the New University of Lisbon's Law School opened in July. Once the parties' avatars agree to the mediation or arbitration, they put money in an escrow account that goes to the winning party. The center is staffed by law professors, law students, and the Ministry of Justice.

Some Second Life disputes have landed in real-world federal court. Two copyright-infringement cases have been filed by plaintiffs with successful businesses in Second Life who discovered that another avatar was duplicating and selling unauthorized copies of their products in-world. The plaintiffs sued because the defendants wouldn't agree to stop their activities, and the reputation of their products was at stake.

In the first case, *Eros v. Leatherwood* (No. CV-01158-SCB-TGW), filed in July in a U.S. district court in Florida, the plaintiff had to subpoena Linden Lab and the defendant's Internet service provider to discover the person behind the avatar. In the second case, *Eros v. Simon* (No. CV-07-4447), filed in October in a U.S. district court in New York, Eros joined with five other content creators to sue a Second Life resident who found a way to create and sell numerous unauthorized copies of the plaintiffs' virtual products in Second Life. The first case is pending, and the second settled in December.

And in a case closely watched by game publishers as well as other

virtual-world providers, Pennsylvania attorney Marc Bragg sued Linden Lab and the company's CEO, Philip Rosedale, in 2006, claiming that Linden had unfairly terminated his account, denying him access to his virtual property. Linden countered that Bragg had found a way to "spoof" the system and purchase land at below-market rates, violating its terms of service agreement. The case was removed to federal court at Linden's request. The result was a ruling that Linden's terms of service were a contract of adhesion and the arbitration clause was unconscionable, effectively denying Second Life participants a means of resolving disputes. (*Bragg v. Linden Research, Inc.*, No. 06-4925.) Last September, Linden changed its terms of service, allowing subscribers to resolve claims of under \$10,000 through "binding, non-appearance-based arbitration." Bragg settled with Linden in October, and his account was restored.

Under the terms of the settlement, Jason A. Archinaco, Bragg's attorney and a partner at White and Williams in Pittsburgh, could say only that the case was amicably resolved and that no one admitted liability. "From a personal standpoint, I would have loved to have tried the case and seen some of the issues resolved," Archinaco says. "It was one of the first virtual-property law cases in the country."

One result of the *Bragg* case is that "all of the things that have been fairly predictable about terms of service agreements have now been thrown up in the air," says Roxanne Christ, a Latham & Watkins partner who has online game publishers and virtual world providers as clients. "What does this mean for click-wrap terms of service and the enforceability of arbitration agreements?" she asks. Her advice to clients: Be evenhanded and give people a way to back out or get refunds.