

# **Bring Me the Head of Philip K Dick! : New Forms of Virtual Property**

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# What is Property?



- **Roman law/Civilian law/English law**
- **Tangible property**
  - **Heritable/real property**
  - **Moveable/corporeal property**
- **Intangible property**
  - **Intellectual property**
  - **Goodwill, trade secrets**
  - **Personal rights/choses in action**
  - **Virtual property?**
    - **Property in MMORPGS**
    - **What else?**

# Eg : Virtual property in MMORPGs



The screenshot shows the iGe website interface. At the top left is the iGe logo. A navigation bar contains links for Home, Affiliate Program, About Us, and Contact Us. Below this is a menu with Buy, Sell, Trade, and Donate options, each represented by a colored square. The main heading reads "The Leading MMORPG Services Company" with a sub-heading "Open 24 hours Instant delivery". On the left, a "CHOOSE YOUR GAME:" section lists various MMORPGs. The center features "Featured games:" with icons for World of Warcraft, Final Fantasy XI, and EverQuest. On the right, there is a BizRate.com customer certification badge and a "Your account" section with login and registration options.

**ige**

Home | Affiliate Program | About Us | Contact Us

Buy Sell Trade Donate

The Leading MMORPG Services Company Open 24 hours Instant delivery

**CHOOSE YOUR GAME:**

- Anarchy Online
- Auto Assault
- City of Heroes
- Dark Age of Camelot
- Dungeons and Dragons
- Eve Online
- EverQuest
- EverQuest 2
- Final Fantasy XI
- Guild Wars
- Lineage 2

**Featured games:**

- World of Warcraft
- World of Warcraft
- Final Fantasy XI
- Lineage II
- EverQuest
- EverQuest

**BizRate.com** customer certified

“Outstanding customer service”

**Your account**

Email:

Password:

Login

- Register !
- Why register ?
- Forgot password?

# MMORPG Virtual Property

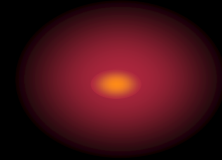
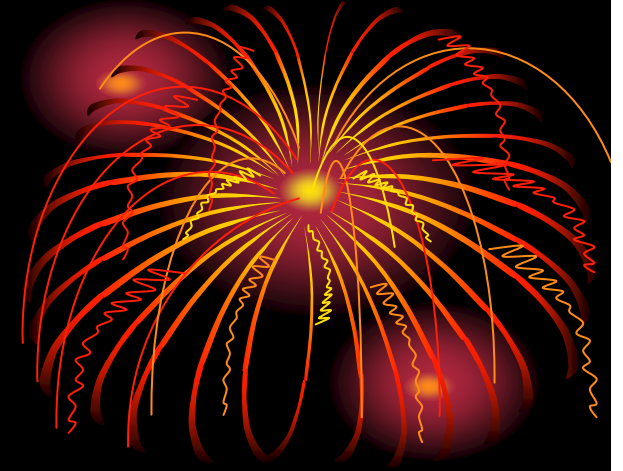


- **“Property” acquired in MMORPGS like EverQuest, Ultima Online, World of Warcraft etc**
- **Eg Entropia virtual space station auctioned for £57,000, Nov 2005**
- **Castronova estimates market at \$2.7 bn in 2006**
- **Major US *academic* concern has been for rights of “virtual personae” – Hunter and Castronova – a “human rights” issue on “private land”**
- **Major *practical* concern has been right of virtual world platforms to control existence and transfer of such VP “rights” by EULA/ToS**
- **But what ARE these rights? Not traditional IP.**
- **Private contractual rights**
- **Need for public regulation? Standard terms contracts – consumer protection in EU?**
- **Cheating or fair game?**

# But what else?



# But what else?



# 1. Rights in avatars

- **An (un-)conventional extension of personality rights?**
- **Issues:**
  - **No global harmonisation**
  - **Clashes between “persona” and owner of intellectual property/EULA in game/platform?**
    - *Cf Wendt and Ratzenberger v Host Int 1997*
  - **Loss of cultural “public domain” – Andy Warhol, *The Simpsons*, etc?**
    - **See dissent in *White v Samsung 1992***



# How far should such rights go?

- **Dogan and Lemley, Carty, argue public interest does not justify economic incentives to create more celebrity (cf copyright)**
- **Moral/natural rights in personality?**
- **Do not libel/privacy laws already cover dignitary harm? Are economic rights justified?**
- **If so, for the *dead* as well as the living? See Connecticut Paul Newman bill.**
- **Should “real life” avatars/robots get special protection for original “persona”?**
- **For non-entities as well as celebrities?**



# Don't lose your head..



- **“Robot”: Animatronic head, sculpted likeness**
- **Programmed with all of PKD’s novels**
- **Some AI programming to enable Q and A**
- **? Consent of PKD estate**
- **Is he a celebrity?**
- **Who own IP/”property” rights?**
- **Public interest?**




## **2. Virtual reputations**









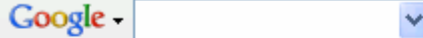







- **Reputation on sites such as eBay and SlashDot created by user feedback**
- **Transferable/Saleable to 3<sup>rd</sup> party?**
- **Technical problems – trans-site portability? Reputation 2.0? See iKarma, Opinity**
- **Legal problems even intra-site – eBay ToS**
- **Does non transferability in contract EBay - > A affect A -> B? Will vary by legal system, and perhaps quality of what is sold.**
- **Should eBay control this asset, or the user?**
- **What is the public interest? What underlies the “reputation”? Fraud?**

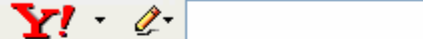





# *Extra commercium?* Who says?



Address  <http://sfbay.craigslist.org/sfc/for/190570103.html>

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# 3. Zero day exploits



- **Code which exploits software vulnerabilities or “bugs”**
- **Underground market clearly exists – criminals, government**
- **But also “white” markets**
- **Auction eg of Excel vulnerability on eBay – to expose M\$ insecurity?**
- **At least 2 companies openly buy and sell exploits – iDefense (now VeriSign) and Tipping Point. Disclosure made to affected company however.**

# Legal issues



- **What is sold? An “IP right”?**
- **Probably an NDA/contract**
- **Is it copy or derivative work of original copyright work? Reverse engineering?**
- **Might be “trigger” not software at all**
- **Public interest: Is it sale of a criminal product? Dual purpose cf encryption, guns?**
- **Should it be property of original author of buggy code? Do they have prior or “moral rights” – some kind of integrity right (cf typos in books)?**
- **Economic work (Sutton and Nagle) suggests a market for vulnerabilities may sometimes create better security eg speed up patch issue.**

# 4. Overview



- **New forms of “virtual property” are mushrooming**
- **Do we simply accept “*if value, then right*”? (Dreyfuss)**
- **Established IP regimes have checks and balances built in re public domain, public policy etc.**
  - **Copyright – fair use, fair dealing etc**
  - **Patents – limitation on time, novelty, morality & *order publique* (PA 1977, s 1).**
- ***Ad hoc* virtual property regimes lack these.**
- **But fairness also sometimes demands returns on labour? Incentives?**

# Issues needing attention



- **Whose property is it?**
- **What happens when clashes between new VP rights and existing IP rights of *Cheers* case?**
- **Should some items be declared *extra commercium*?**
- **Should *public* interest rules supervise *private* regulation eg by games platforms, software companies?**
- **In particular, what happens to the public domain? Free expression?**
- ***Economic* work is going on to see if creating property rights is effective in promoting/protecting public interests eg in creation of security, trust – but this is making little *legal* impact in novel areas**
- **What about trans-national harmonisation?**
- **Do we need uniform rules across *types* of VP?**