

Virtual Litigation in the Real World

The 1982 classic technology movie, TRON tells the story of a person transformed into data and then thrust into the virtual world of individual computer programs fighting for their cyber lives.

More than 25 years later, life now emulates art. People are transforming themselves into virtual alter egos, living lives in Second Life, “friending” other individuals on social networking sites, or doing battle with others in online games. Steven Lisberger and Bonnie MacBird probably did not realize how the virtual fantasy world they created in 1982 would so closely mimic the world of today’s online communities.

How we live our lives fuels future litigation. The same is true in the unique intersection of the virtual world and the real world. Few online examples highlight this better than Second Life. Second Life allows users (residents) to spend real money on virtual “property” and invest in “banks.” In one recent case, a Second Life resident purchased virtual property with real money, which was later confiscated from him.[1] The resident was a lawyer in real life and brought suit in his native state of Pennsylvania. Additionally, “Technology Review” highlights a story with a Second Life banks disappearing and taking the money of residents with them.[2]

Both examples involve a cavalcade of issues. Consider the following:

- Who do you sue from the virtual world?
- In the case of the “bank” that vanished, how do you track them down?
- If you can’t find the bank, do you sue the service provider?
- Will you need to use online service of process if you cannot find a physical address to serve a defendant?
- Where do you sue?
- In a tort case, where the wrong was committed can be the proper venue, but what happens when the fraud was online?
- Is there a forum selection clause that sets the venue of the case?
- The “property” case had a direct challenge to the Second Life forum selection clause, which was defeated because of the interactive nature of the marketing.
- What do you request in discovery?
- If tracking down the vanished bank, seeking ISP addresses from the service provider might help you track down the bank.

The virtual world is blurring the lines with the real one. Classic litigation such as breach of contract, fraud and defamation can all find their genesis in the virtual world and litigation in the real one. Issues of forum selection clauses, proper venue, choice of law, and even finding the defendant will be continuing challenges as our lives behind the screen merge with our lives in front of the screen.

[1] *Bragg v. Linden Research, Inc.*, 487 F.Supp.2d 593 (May 30, 2007)

[2] David Talbot, “Troubles in Second Life,” *Technology Review*, page 58, February 2008.