Computer Games and Virtual Worlds: A New Frontier in Intellectual Property Law

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Edited by five individuals with the support of several contributors, Computer Games and Virtual Worlds: A New Frontier in Intellectual Property (“Computer Games and Virtual Worlds”) undertakes an unenviable task—making sense of the legal uncertainty that exists where computer games and virtual worlds intersect with intellectual property rights. The authors make no misrepresentations; much of the law in this area is unsettled. By using the existing legal landscape and several instances of analogous circumstances, however, the authors are able to convincingly suggest its direction, and perhaps more importantly, alert readers to pitfalls and the law’s certain uncertainties.

Computer Games and Virtual Worlds, like many such books, presents a different element of the overarching topic in each chapter; strung together by the theme of intellectual property and real world applicability. This technique, it seems, is an effective method by which to approach the challenges posed by specialized topics requiring specialized knowledge. Its authors say as much, noting that the book was designed to allow chapters to “stand on their own” and that it is best suited as “a starting point for research” or “as a primer on a particular area of law.”

Perhaps the most admirable element of the book is its everyman readability. Intellectual Property law being a notoriously difficult subset of legal practice, the editors appear to strive to describe concepts in a manner that even non-lawyers would be comfortable with, particularly
those topics upon which individuals without a familiarity with the law might be seeking information. Additionally, and perhaps by design, portions of each chapter read as suggestions to those who might be in the chapter’s applicable industry. This is not only helpful to practitioners who might be seeking guidance as to the common technique in practice, but affords those without an extensive legal background the opportunity to gain an understanding of how the legal landscape appears. As such, any individual contemplating the creation of a virtual world, video game, or other like program should add *Computer Games and Virtual Worlds* to her reading queue.

In the first of its six chapters, *Computer Games and Virtual Worlds* addresses End-User License Agreements (“EULA”). As the most prevalent control mechanism used by private companies to control their virtual worlds, EULAs are contracts between virtual world users and the companies that create and manage them. Accordingly, the authors addressed the “typical” EULA, referencing those used in World of Warcraft, The Sims, and Age of Conan. The book then addresses the several challenges posed by EULA governance and limitations in their use, stemming primarily from traditional contract rights.

The first instance of the text’s theme—guiding prospective virtual world operators--can be seen as early as chapter one. In its analysis, the book places a great deal of emphasis upon an EULA’s malleability as being one of its most significant and desirable attributes. As courts begin to review and interject themselves in the field of EULAs, the book indicated that owners of virtual worlds will be able to amend their terms in order to best protect the interests of the controlling organization. As an example, the text highlighted the case of Bragg v. Linden Research, Inc., where a court found a clause in a company’s EULA unconscionable.\(^1\) Though they would not go so far as to recommend the implementation of such an EULA outright, the

\(^1\) 487 F. Supp. 2d 593 (E.D. Pa. 2007).
authors noted several advantages to the practice while highlighting those narrow issues from which courts have thus far found EULA’s unenforceable; providing their implicit approval.

Upon addressing the private governance procedure used by most virtual world operators, the book then begins a chapter-specific analysis of copyright law, patent law, trademark law and the law of trade secrets; each in the context of virtual worlds and the video games from which they are often derived. In these chapters, the book seeks to answer questions as to ownership of property rights in virtual worlds, the implications of existing and potential future patent rights in the virtual world space, the use of trademarked items in video games, and the likelihood of trade secret defenses. In each section, the book describes the content of the present law, and then proffers its interpretation as to the law’s likely status in the future. As an example, the book sites the several instances in video games where companies that (presumably) do not have permission to use a trademark go to great lengths to avoid any implication of its use. The authors contrast such instances with that of movie producers, where unlicensed use of trademarked items is commonplace in production. Finally, in a nod to prospective creators and users of these virtual worlds, the book suggests that video games utilizing trademarked items require licensing primarily because of trade practices themselves—video game owners have long been unwilling to accept the risk of litigation, and thus any unlicensed use of a trademark would likely make it’s user particularly susceptible to legal attack. The book contrasts this reality with that of the film industry, where unlicensed use of trademarked items is both prevalent and an accepted trade practice.

In its final chapter the book seeks to shed light on perhaps the most difficult element to address by virtual world users and creators alike, the “international element.” The very nature of virtual worlds, of course, is that they do not have traditional boundaries despite their users
residing within one or another. With this trait comes substantial legal confusion. What intellectual property law applies, to whom, and how? All of these questions are further complicated by the simple fact that there is no international intellectual property law; instead laws of nations are melded together to form a tapestry of laws, often times with varying degrees of enforceability and applicability. Yielding to this fact, the authors attempt to highlight those treaties in place to provide some foundation in law for virtual, international intellectual property disputes, and state the simple truth that the lack of defined rules and laws in place renders the technique for enforcement of virtual intellectual property rights nothing short of unknown.

To their credit, the authors and editors of *Computer Games and Virtual World* offer insights as to many of the current issues faced by those with interests tied to online gaming. Nevertheless, at various points in the book a reader might very reasonably become frustrated with the feeling that his intellectual property in this context really is “the great unknown.” This is not a pointed critique of the authors, for it is simply the state of the law, but it does bring about the realization that in many respects, there are no certainties in this field. Indeed, upon completing the book, the creator of an online game might find himself with more questions and concerns than when he began.

In their efforts to unwind the challenges faced by the corporate and user community of virtual worlds and video games, the authors of *Computer Games and Virtual Worlds* have done the legal and business communities a great service. Any practitioner or layman seeking insight as to the status of the rights afforded users and creators of virtual worlds will find the law’s background and insight helpful. The authors and editors make no claim to proffer the answer to these difficult intellectual property questions—at the moment, after all, no such answer exists. What they do succeed in doing, however, is bringing to readers’ attention the status of the law, if
it exists at all, and the directions in which it might go. When operating on “a new frontier in intellectual property,” could we really ask for more?