

Intellectual Property Rights in

SECOND LIFE®

Richard C. Balough, Attorney at Law
www.balough.com
IICLE Presentation, December 11, 2008

Second Life (SL™)

- What is it?
- Why should lawyers care?
- What should lawyers do about it?

What is SL?



What is SL?

- Massively Multiplayer Online Role Playing Game (MMORPG)
- Online virtual world
- Persistent and dynamic
- Interactive
- Inhabited by avatars
- Market for real and personal property
- User-created content → with IP ownership

Is it really a game?

- Monopoly vs. Second Life
- Investment of real money (US\$)
- Creation of intellectual property

How big is it?

- Population
 - 499,547 logged in last 7 days
 - 905,512 logged in last 30 days
 - Total residents = 15,808,203
- Total Linden \$ supply
 - L\$5,310,635,825
 - L\$183 = US\$1

Data as of November 11, 2008

Who uses SL?

- Individuals
- Universities
- Businesses
- Media outlets

Judge Posner

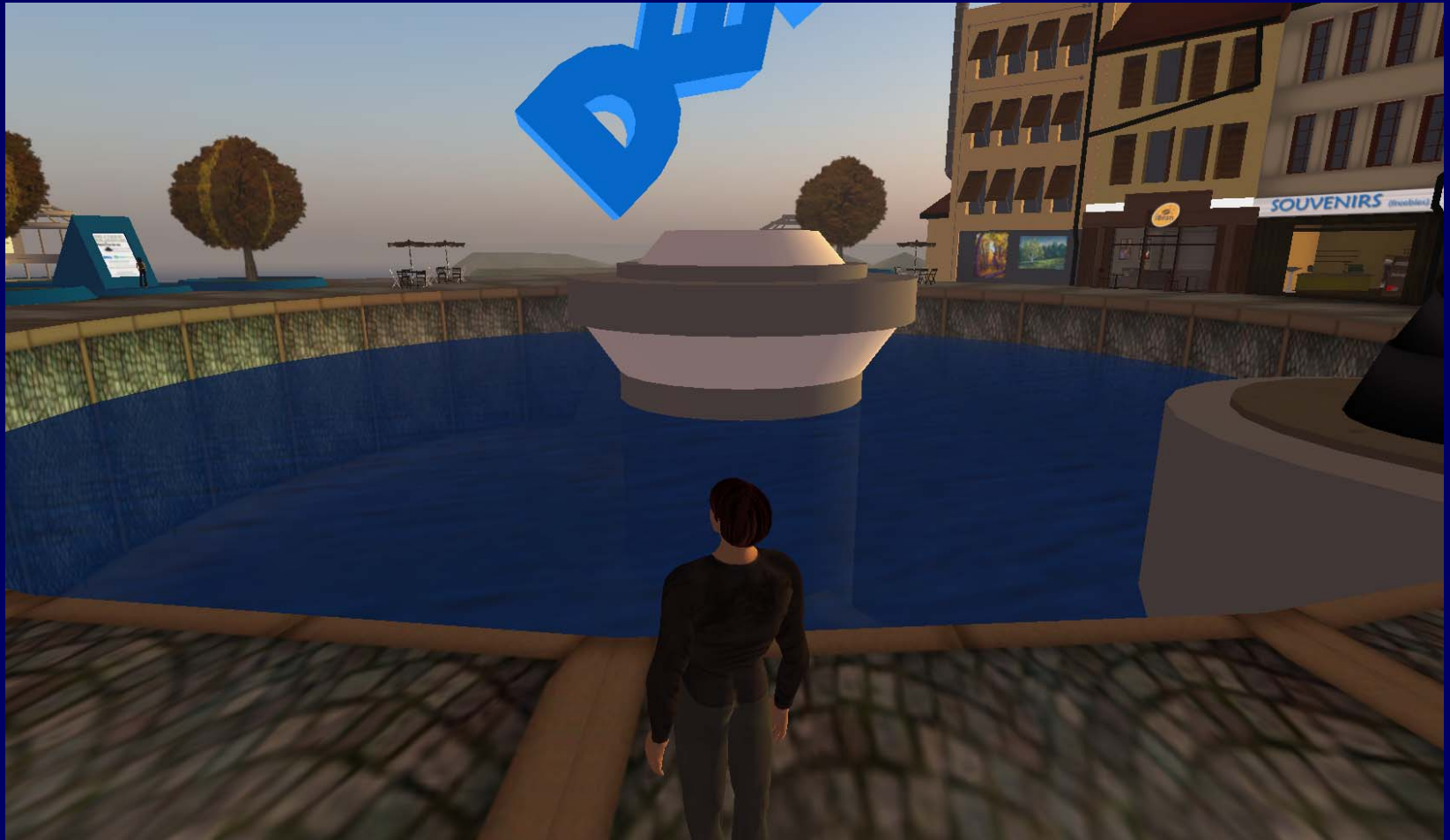


Richard C. Balough, Attorney at Law

Stanford University



Dell Computer



Reuters News Service



How do real world businesses use SL?

- Company meetings
- Employee training
- Product design and prototyping
- Advertising
- Product testing/market research
- Product review with vendors

What law applies?

- No law, it's a game
- Developer law—terms of service
- External law

SL Terms of Service

3.2 You retain copyright and other intellectual property rights with respect to the Content you create in Second Life, to the extent that you have such rights under applicable law.

SL Terms of Service

3.2 You automatically grant . . . to Linden Lab:

- (a) a royalty-free, worldwide, fully paid-up, perpetual, irrevocable, non-exclusive right and license to (i) use, reproduce and distribute your Content . . .
- (b) the perpetual and irrevocable right to delete any or all of your Content . . .

SL Terms of Service

3.2 (iii) Linden Lab's acknowledgement hereunder of your intellectual property rights in your Content does not constitute a legal opinion or legal advice, but is intended solely as an expression of Linden Lab's intention not to require users of the Service to forego certain intellectual property rights with respect to Content they create using the Service.

SL Terms of Service

3.3 Linden Lab retains ownership of the account and related data, regardless of intellectual property rights you may have in content you create or otherwise own.

SL Terms of Service

- . . . with respect to Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data Linden Lab stores on Linden Lab servers (including without limitation any data representing or embodying any or all of your Content).

SL Terms of Service

Your intellectual property rights do not confer any rights of access to the Service or any rights to data stored by or on behalf of Linden Labs.

SL Terms of Service

5.3 All data on Linden Lab's servers are subject to deletion, alteration or transfer.

SL Terms of Service

THESE DATA, AND ANY OTHER DATA, ACCOUNT HISTORY AND ACCOUNT NAMES RESIDING ON LINDEN LAB'S SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN LINDEN LAB'S SOLE DISCRETION.

SL Terms of Service

3.2 You automatically grant to Linden Lab
(b) the perpetual and irrevocable right to delete any or all of your Content from Linden Lab's servers and from the service, whether intentionally or unintentionally, and for any reason or no reason, without any liability of any kind to you or any other party

SL Terms of Service

6.2 Linden Lab may observe and record your interaction within the Service, and may share aggregated and other general information (not including your personal information) with third parties.

SL Terms of Service

You acknowledge and agree that Linden Lab, in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service.

Copyright

- Is a contribution to SL a joint work?
- Can an avatar with artificial intelligence be an author for copyright purposes?

Trademarks

- Can an avatar be a trademark?
- Will the PTO grant a trademark for a virtual creation?
- Is a virtual rendition of a trademarked good infringement?

Trade Secrets

- Can you take sufficient steps to maintain the secrecy of a trade secret in Second Life?
- Are private islands private enough to protect a trade secret?
- Can an avatar sign and be bound by a virtual confidentiality agreement?
- Does Linden's observation policy trump any trade secret?

Termination of account

2.6 Linden Lab has the right at any time for any reason or no reason to suspend or terminate your Account

Does that mean that Linden Lab keeps your intellectual property?

Terms of service

Are the terms of service valid?
If not, what law applies?

RICHARD C. BALOUGH

Attorney at Law

53 W. Jackson Blvd. Ste. 936

Chicago, IL 60604

312.834.0400

rbalough@balough.com

www.balough.com

IICLE Presentation, December 11, 2008