

## "Ye Shall Inherit My Magic Sword!" Post-Mortem Ownership in Virtual Worlds

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Edina Harbinja, [Virtual Worlds – a Legal Post-Mortem Account](#), 11 **SCRIPTed** 273 (3d ed. 2014).

Have you ever thought of who will have access to your email when you die? If you have social media, have you prepared a digital will that will allow your loved ones to dispose of your online presence? Have you ever wondered what happens to people's digital accounts when they pass away? These and many other questions are part of a growing number of legal issues arising from our increasingly networked life, and it is the main subject of [Virtual Worlds – a Legal Post-Mortem Account](#), which looks at the issue of post-mortem digital arrangements for virtual world accounts, where [the author](#) discusses several possible ways of looking at virtual goods to allow them to be transferred when the owner of the account dies. The article is a great addition to the growing scholarship in the area, but it is also an invaluable shot-in-the-arm to the subject of virtual worlds.

The legal discussion of virtual worlds has gone through a rollercoaster ride, if you pardon the use of the tired cliché. In 1993 author Julian Dibbell published a remarkable article entitled *A Rape in Cyberspace*. In it he recounts the happenings of a virtual world called LambdaMOO, a text-based environment with roughly one hundred subscribers where the users adopted assumed personalities (or avatars) and engaged in various role-playing scenarios. Dibbell describes how the community dealt with perceived sexual offences committed by a member upon other avatars. The story of LambdaMOO has become a classic in Internet regulation literature, and has been pondered and retold in seminal works such as Lessig's *Code* and Goldsmith and Wu's *Who Controls the Internet*. Dibbell's powerful story of the virtual misconduct of an avatar during the early days of Cyberspace still resonates with legal audiences because it brings us back to crucial questions that have been the subject of literature, philosophy and jurisprudence for centuries. How does a community organise itself? Is external action needed, or does self-regulation work? What constitutes regulatory dialogue? How does regulatory consensus arise? And most importantly, who enforces norms?

There was a period of maturity in the literature as other interesting legal questions began to arise, such as ownership of virtual goods, customer protection, contractual validity of end user licence agreements (EULAs), just to name a few. The growing legal interest arose from the evident value of the virtual economy. A report on the virtual economy for the World Bank calculated that the global market for online games was \$12.6 billion USD in 2009, and that the size of the secondary market in virtual goods (the monetary value of real money transactions in virtual goods) reached an astounding \$3 billion USD. The culmination of this more mature era of research consists of two excellent books, *Virtual Justice* by Greg Lastowka and *Virtual Economies: Design and Analysis* by Vili Lehdonvirta and Edward Castronova.

However, after that golden period we have had a marked decline in the number of papers discussing legal issues, with the exception of the continuing existence of the *Journal of Virtual Worlds Research*. The apparent drop in published research could be caused by the fact that virtual worlds themselves have been losing subscribers. The once-mighty Second Life is now mostly mentioned in phrases that begin with "Whatever happened to Second Life"? Even popular massively multiplayer online games (MMOGs) such as World of Warcraft have also been losing subscribers. But most importantly, many legal issues that seemed exciting some time ago, such as virtual property, or the legal status of the virtual economy, did not produce the level of litigation expected. Most legal issues have been solved through a combination of consumer and contract law.

Edina Harbinja's article resurrects the interest in virtual worlds with the study of an area of research that has been often neglected, and it is the status of virtual world accounts after the death of the user. While subscriptions figures

have been on the wane, the value of the virtual economy has remained the same. Blizzard recently made it easy for subscribers of World of Warcraft to transfer funds from the real world into the virtual economy, and vice versa, with the introduction of in-game token systems. This has meant an injection of real money into virtual economies, potentially resulting in an increased legal interest as to the assets of virtual goods.

Harbinja describes the various types of virtual assets and virtual property, using a range of theories of property to justify the existence of virtual worlds as viable and valuable assets subject of the same rights as 'real' property. These include rivalrousness, permanence and interconnectedness as elements that are present in virtual goods making them worthy of legal protection as property. For example, in order to apply tangible notions of property to virtual goods, commentators remark that the possession and consumption of a virtual good must exclude "other pretenders to the same resource." If virtual goods can have some of the similar characteristics that make tangible goods valuable and worthy of protection, then they should be similarly protected.

She then explores various theories of how to deal with virtual property, including the use of contract law in the shape of end-user licensing agreements, the constitutionalization of virtual worlds, and even going as far as suggesting the creation of virtual usufruct to describe the situation of property in virtual worlds. An usufruct is a civil law concept dating back to Roman times (as a type of personal servitude) that "entitles a person to the rights of use of and to the fruits on another person's property." A virtual usufruct would therefore contain limited rights by a person to use an item, to transfer an item, and even to exclude others from exercising the above. Harbinja proposes that since the usufruct would terminate on death, the personal representative of the deceased would be required to assess whether any of these rights can be monetised and the value transferred to the account-holder's estate.

That being the case, the author explores various options of how to deal with virtual property after the death of the subscriber. This is tricky, as at the moment there is not a single regime of property allocation of virtual goods, and some type of rights may hinge on the value of the virtual goods. The author seems to favour strongly legal reform to allow for some form of usufruct after death as described above.

This is a welcome addition to the body of virtual world literature, and it may help to inject life to a declining genre, pun intended.

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