Abstract

In light of the growing social, economic, and legal impact of virtual worlds, this thesis explores copyright issues around virtual items: copyrightability, infringement, and liabilities arising from infringing uses. More specifically, it addresses the main question of how copyright laws apply to virtual items in virtual worlds. Looking at the nature and governance of virtual worlds and virtual items, it discusses the following secondary research questions: What are virtual worlds and virtual items? How are virtual items governed by virtual world developers? Are virtual items copyrightable works? Which rights of the copyright owner are potentially exploited in everyday use of virtual worlds? Who is liable for a potential infringement of these rights? These questions are explored through two distinct case studies, which are both compared and brought together to give a holistic perspective on the issue. Among many virtual worlds, this thesis focuses on World of Warcraft (WoW) and Second Life, developed by Blizzard Entertainment and Linden Research respectively. These two cases are significant not only due to their popularity but also due to their distinct orientations. While the first case represents game-oriented virtual worlds, whereby developers retain the monopoly over virtual item creation; the latter case is a non-game-oriented virtual world that offers users the freedom to create, use, exchange, and monetize virtual items as they like.

Within this context, the thesis employed participatory and documental research for data collection. Participation in WoW and Second Life enabled the exploration of limits and opportunities of creating, customizing, selling, buying, and exchanging virtual items within the confines of these worlds. This experience was useful in creating and exploring potential copyright issues on virtual items in both WoW and Second Life. In addition, documental research was employed to gain detailed information on virtual item creation and explore how developers govern their virtual worlds through user agreements and other official
documentation. Therefore, official documents and sources of virtual world developers, community and user contents, and a review of news media on Second Life and WoW constitute the documental data source of this thesis. Through these data collection methods, copyrightability, infringement, and liability issues on virtual items are analyzed particularly in relation to the US and EU law, the two main copyright regimes. The US regime, based on common law system, and the EU regime, containing elements of both common and civil law systems, handle copyright issues differently. How these two regimes work in relation to virtual items are discussed throughout the substantive chapters of the thesis.

The thesis is organized in five substantive chapters, each focusing on one of the aforementioned secondary research questions. Chapter 2 offers a conceptual framework for virtual worlds and virtual items. While virtual worlds are defined as persistent, social, interactive, immediate, avatar-mediated, and computer-based simulated environments; virtual items are conceptualized as computer-based simulated items that are utilized as rivalrous, persistent, and interconnected in virtual worlds. These definitions are further elaborated in the following substantive chapters through specific examples in WoW and Second Life. Chapter 3 moves on to investigate how virtual items are governed in virtual worlds of WoW and Second Life. Developers govern virtual worlds and virtual items through code and user agreements. While the first mechanism designates the nature of virtual worlds, user agreements set the rules for users’ interactions with each other, virtual items and the virtual world itself. Both the code and the user agreement mechanisms of WoW inhibit users to create any virtual item from scratch or use virtual items for real-world economic interests. In contrast, the developer of Second Life provides the means and opportunities for users to create virtual items from scratch and encourages them to make real-world money out of the virtual items they create. These differences in governance mechanisms of WoW and Second Life inform their virtual item systems, the ways in which
users can create virtual items, and the extent to which these items can be protected under current copyright laws. In other words, they designate whether virtual items can be considered as original works. **Chapter 4** discusses copyrightability of virtual items created by WoW and Second Life users according to the US and EU regimes. Virtual items created by users should be original, and where necessary fixed, expressions of ideas to be protected by copyright. While WoW users are not given the means and opportunities to create any original virtual item; in Second Life, users are free to create original virtual items from scratch or upload items they created via a third-party software to the virtual world. Regardless of the two distinct copyright regimes and the different orientations of WoW and Second Life, the chapter highlights that discussing the copyrightability of virtual items require a case-by-case analysis. It argues that, virtual items, created by users, can be considered as original and fixed, hence copyrightable, works depending on the opportunities provided by the developer. Having discussed copyrightability of virtual items, **Chapter 5** moves forward with the question of how the rights of the copyright owners on virtual items are potentially exploited in everyday use of virtual worlds. Users and developers may potentially exploit three exclusive rights of the copyright owners: reproduction, distribution, and public display. The US and the EU regimes regulate and interpret these rights differently. These differences become more evident especially with regards to the reproduction right. When a user logs in to a virtual world and sees a virtual item, she reproduces this item in the RAM of her PC. According to the RAM copy doctrine in the US, this reproduction is considered as fixed as the RAM copy is not in transit from one place to another. In the EU, this reproduction falls within the scope of exclusive rights of the copyright owner as well. However, this incidental reproduction is regarded as an exception within the scope of Article 5 of the InfoSoc Directive. Notwithstanding the different rationales behind their approaches, neither the US nor the EU regime consider virtual items to be distributed in everyday use of virtual worlds. Likewise, in both of the regimes, virtual items are considered
as publicly displayed / communicated to the public, although they handle the concepts of “copy”, “display”, “communication”, and “the public” differently. Chapter 6 shows that different governing mechanisms employed by Blizzard and Linden become especially important in the issue of liability. Who is liable for a potentially infringing use of a virtual item? Blizzard inhibits its users to create any original virtual item. This protectionist approach leaves no space for infringing uses of virtual items within the confines of WoW. Since users cannot create or upload potentially infringing works to the virtual world, Blizzard’s or users’ liabilities do not arise for a potential violation of the rights of the copyright owner over a virtual item. In contrast, users’ active role in creating virtual items in Second Life makes the issue of liability complicated for Linden. First, users may create or upload infringing virtual items in Second Life, paving the way for potential violation of the right holder’s exclusive rights. In other words, in this case, these users can be primarily liable for copyright infringement. Second, such infringing activities of users can also make Linden secondarily liable as a service provider for both the Second Life and Second Life Marketplace services. In the EU, Linden could be considered as too active to benefit from safe harbors designated for service providers for both of these services. In the US, service providers are protected more comprehensively and can benefit from safe harbors if they do not have the actual knowledge of a specific infringing activity or are not aware of the apparent conditions that lead to the infringing activity on their servers. Accordingly, in the US, Linden can benefit from safe harbors as long as it takes the necessary procedural requirements and removes or disables access to the infringing content upon being informed or becoming aware of the infringement.

These findings speak for two main arguments concerning (1) the role of the governance of virtual worlds, and (2) the role of different jurisdictions in understanding copyrightability, infringement, and liability arising from the utilization of virtual items. First, although
representatives of the two distinct regimes of game-oriented and non-game-oriented virtual worlds, the cases of WoW and Second Life pinpoint how everything depends on the governance of virtual worlds by the developer through code and user agreements. The more the developer designs its virtual world as an entertainment-only game product (like WoW), the less the chances are for creating copyrightable real-world work, infringing any real-world exclusive right of a copyright owner, and leading to liability of users or the developer. In contrast to this approach, the more the developer blurs the lines between the real world and the virtual world by allowing users to create virtual items, sell them in a marketplace and make real-world money through these sales (like Second Life), the more it turns virtual world practices into extensions of the real world. This, in turn, increases the possibilities of real-world infringement of copyrightable works and endows users and developers with potential liabilities due to these infringing uses. Second, although virtual worlds cut across national boundaries, the governance strategies employed by the developers might have different legal consequences in different jurisdictions. The US and the EU regimes handle the issues of copyrightability, infringement, and liability differently. Among these, liability is the most apparent area where the US and the EU copyright regimes diverge, especially within the scope of liability of service providers. Service providers including virtual world developers are protected more comprehensively in the US than in the EU. This comprehensive protection has the potential to boost the development of new services as companies can innovate more freely without the risk of being liable for the potentially infringing activities taking place on their services.