10

Frequently
Asked Questions
About
Virtual Worlds

pillsbury

What Will Be Better Than the Internet?

Internet technology is on the cusp of a transformation as significant as the popularization of the World Wide Web in the 1990's. The improved processing and graphical power of personal computers, combined with increased bandwidth, the maturation of 3D graphics-rendering technology, social networking technologies and the ubiquity of user-generated content, has opened the floodgates to entirely new ways to communicate, interact, learn and transact online—virtual worlds.

Many industry experts believe that current virtual worlds are harbingers of a major evolution in the way we interact online. According to *Virtual Worlds News*, nearly $2 billion was invested in virtual worlds from 2007 to 2009, and hundreds of different virtual worlds exist, with more being added nearly every day. Virtual worlds today, which some call the "3D Internet", appear to be where the 2D Internet was in 1994—poised for explosive growth and ready to transform the way we work and play on a daily basis.

In 1994, the Web as we know it now did not exist. "Amazon" was just the name of a river, and only mathematicians had heard the term "Google." Many people predicted the Internet would be nothing more than a fad. Companies like Prodigy, AOL and CompuServe offered limited connectivity, but the services were chiefly used for chatting and playing games. Most businesses did not have Web sites. *Internet World Stats* reports that in 1994 there were less than 15 million people using the Internet. By 2000, there were over 360 million. Industry leaders predict that virtual worlds will see the same type of explosive growth that the Internet saw during the mid-to-late 90's. *Gartner* predicts that 80% of all active Internet users will have a virtual world presence by 2011.

How Can Pillsbury's Virtual Worlds & Video Games Team Help?

Pillsbury was the first major law firm to establish a multidisciplinary team dedicated to virtual worlds and video games. The team helps business, government, non-profit and educational clients across a range of industries develop business and legal strategies to protect their interests, expand their opportunities and minimize liability. Our lawyers are thought leaders in the industry, publishing, speaking and advising on the emerging issues relating to the use of virtual worlds technology. With a top-ranked Intellectual Property practice and lawyers with legal backgrounds in data privacy, open source, regulatory, venture capital, tax, banking and finance, employment, licensing, litigation and others who have been actively involved in the virtual worlds and video games space from the start of this expanding industry, Pillsbury is the "go-to" firm in this burgeoning area for all of your legal needs. Our attorneys have experience handling industry-specific issues, such as Digital Millennium Copyright Act (DMCA) take-down notices, drafting and enforcing terms of service and working to comply with the Children's Online Privacy Protection Act (COPPA).

In the following pages, we provide a brief overview of some of the most frequently asked questions by companies already using or anticipating the use of virtual worlds technology.

Virtual Law author Benjamin Duranske interviewing authors Eddy Shah (*Second World*), Wagner James Au (*The Making of Second Life*), Mark Bell (*Second Life for Dummies*), Tom Boellstroff (*Coming of Age in Second Life*) and Julian Dibbell (*Play Money*) on Cornell professor Robert Bloomfield's popular weekly interview show, *Metanomics*, in the Second Life® world.

1 What are virtual worlds?

Virtual worlds are typically graphical, immersive, interactive, computer-generated spaces that enable new kinds of user-generated content and a new level of social and business networking.

- **Graphical**—Most virtual worlds are 3D graphical representations as opposed to 2D text-based Web sites.

- **Immersive**—Unlike existing Web sites, many virtual spaces are immersive, since a graphical representation of the user (or "avatar") typically appears in the virtual space.

- **Interactive**—By controlling their avatars, users can interact with each other and the virtual world.

- **User-generated Content**—In many virtual worlds, users can create persistent content, including parts of the virtual world itself, with which other users can interact even if the creator is not logged in.

- **Social and Business Networking**—Through avatar interaction, users can communicate in a graphical and more expressive manner with their existing network of friends, business associates, clients and customers, and can expand these networks.

Key takeaway: Virtual worlds' graphical, immersive and interactive nature represents a major step forward in how people will interact online.

An interview tied to a product launch held in the Second Life® world. Sun Microsystems'
Danny Coward being interviewed by Jonathan Erickson, Editor-in-chief of *Dr. Dobb's Journal*.
Whereas a Web site product launch is restricted to one-way communication, a virtual world
launch allows real-time, shared interaction with potential customers.

2 Do virtual worlds currently provide business opportunities?

Yes. Many people associate virtual worlds only with games and social networking. It is true that many virtual worlds are focused on or include a game and/or social networking component. However, virtual worlds are increasingly being used as a business tool and provide a seemingly infinite number of new business opportunities for companies that embrace them. In fact, many business-oriented virtual worlds leverage the popularity of the gaming and social networking phenomena to make training, meetings and other business interactions more interesting and engaging.

Additionally, it is clear that the current generation of consumers is, and future generations will be, more computer savvy and socially networked than prior generations. For many reasons, traditional media and marketing methods are less effective with this demographic. Many forward-looking companies are using virtual worlds as a new media to capture this elusive demographic. In fact, some of the most heavily trafficked virtual worlds are those used by kids and teens. The ability to connect with kids and teens using their media of choice will likely become even more important for businesses as time goes on. Many companies already are using virtual worlds to expose this demographic to their brands in an effort to capture mind share and create brand loyalty at an early age.

Key takeaway: Significant business opportunities already exist for forward-looking companies willing to leverage virtual worlds technology now.

LE.LOOK, a popular user-created shopping mall in the Second Life® world. Second Life creator Linden Lab reported that in-world user-to-user transactions increased 54% in 2008 to $361 million.

3 How are commercial businesses currently using virtual worlds?

Businesses are using virtual worlds technology as a business tool for both *internal purposes* (e.g., to enable employees in remote locations to collaborate in a more interactive, cost-effective way) and *external purposes* (e.g., for sales, marketing, support and training for customers/clients and prospects). Some uses include:

- **Training and Simulation**—An online tool for training and simulation (both internal and external), particularly in situations involving hazardous materials or circumstances and/or to accommodate remote participants.

- **Collaboration**—A more interactive tool for communicating with remote participants in a more engaging way than by telephone or video conference, but without the attendant travel expense.

- **Branding**—A new channel for branding and advertising, obtaining customer feedback and providing product information in a more graphical way, enabling customers to experience and interact with a product in-world to enhance real-world sales.

- **Commerce**—A new channel for revenue via the sale of virtual goods and services and to drive sales of real-world goods and services.

- **Recruiting**—A new channel to reach potential employees, conduct screening interviews and expose applicants to a representation of the work environment.

Key takeaway: Many businesses already are using virtual worlds for a variety of internal and external business purposes.

Panel discussion hosted on June 23, 2006, in the Second Life® world by the Berkman Center at Harvard University titled "Avatar-Based Marketing: What's the Future for Real-Life Companies Marketing to Second Life Avatars?"

Credit: Pathfinder Linden; Creative Commons Attribution 2.0 Generic License.

4 How are educational institutions, governments and non-profits using virtual worlds?

All types of businesses and other entities are using virtual worlds technology in a variety of ways. The types of entities using virtual worlds and sample uses include:

- **Educational Institutions**—Hundreds of educational institutions are using virtual worlds to recruit potential applicants, provide virtual campus tours and/or to enhance classroom and remote learning.

- **Governments**—Federal, state and local governments are using virtual worlds to facilitate the dissemination of information to their citizens, provide training and simulation to employees and facilitate collaboration among employees.

- **Non-profits**—Non-profits are using virtual worlds as a forum for disseminating information, sharing thoughts, managing projects and enabling networking.

Key takeaway: All types of innovative businesses and other entities are harnessing the power of virtual worlds to enhance collaboration and enable more engaging interactions.

Virtual Manhattan by YouCity, from www.youcity.com.

5 What business opportunities lie ahead?

Virtual worlds are developing at an exponential rate, as are the uses of these spaces and the business opportunities that present themselves. Many exciting opportunities are emerging, including mirror worlds and augmented reality.

- **Mirror Worlds**—Typically virtual replicas of real-world locations that enable users to visualize, explore and interact with the virtual location. Many are designed by providing an underlying layer based on real-world geospatial data (e.g., Google Earth) and then overlaying a 3D interactive layer that provides faithful depictions of the streets, buildings and other structures in their actual locations. The structures can be interactive, and real-world data can be fed into the mirror world. As a result, users can visit desired places and virtually walk down the street to experience the locale. Even more valuable from a business perspective is that users can interact with the businesses and other entities that populate the buildings and obtain real-time data relating to these businesses.

- **Augmented Reality**—An augmented, or mixed, reality typically involves enhancing an experience by adding digital data to real-world environments, or adding real data to digital environments so that the real and digital environments are integrated. An augmented reality system generates a combination of the real scene viewed by the user in the real world, and a virtual scene generated by the computer that augments the scene with additional information. Companies are just beginning to leverage the possibilities. For example, a map of a subway system on a mobile device could detect a physical location and overlay nearby subway stops on a live image from a mobile device's camera. Some applications overlay digital data on the real world as well, such as a recent event sponsored by Pillsbury in which live acoustic guitar music from a virtual world was simultaneously piped into the location of a real-world event, along with images of the avatar of the guitar player, on a huge projection screen. Enhancing your current and potential customers' experience and piquing their curiosity using these new technologies can help drive your products, services and brand into new market demographics.

Key takeaway: Businesses have only begun to scratch the surface for advanced uses of virtual worlds technology, such as mirror worlds, augmented reality and more.

An avatar visits the server tower at the IBM complex in the Second Life® world to learn about new IBM products. IBM uses its Second Life® world presence to promote and demo products and services, hold meetings and presentations, conduct consumer forums, host an IBM library and offer a staffed 24/7 IBM Business Center.

6 Why are companies using virtual worlds?

Companies are using virtual worlds for many reasons, including to lower costs, enhance employee and customer interactions, increase communication, amplify the online experience, reach a broader, more tech-savvy audience and, ultimately, leverage a new media channel.

- **Lower Costs**—Many internal and external meetings require the expense of physical travel or phone conferences. While on-site meetings may be more personal, their travel costs, loss of worker productivity (e.g., lost time due to travel, being away from the office, fatigue) and travel-related environmental costs sometimes make the benefits of the personal experience prohibitive to the bottom line. And while phone conferences are more affordable, they are less personal and interactive, often resulting in participants losing interest or not paying attention due to multitasking. Virtual worlds provide a more cost-effective experience than in-person meetings and are more personal and engaging than phone conferences, resulting in reduced expenses, improved productivity and environmental benefits.

- **Enhanced Interactions**—Virtual worlds enable communication in a more graphical and expressive manner that rivals face-to-face communication. For external communications, customer sales, marketing, training and support activities can be handled more graphically and interactively to enhance business relationships. Internally, global workforces can congregate in virtual meeting rooms where spontaneous idea exchanges and team building can take place in a way that is simply not possible using traditional communications tools.

- **New Media Channel**—Creative, well-executed branding, advertising and customer-relations strategies within virtual worlds are providing effective mechanisms for creating brand awareness and increasing sales for consumer and business products and for generating feedback from customers. Additionally, leveraging the explosive growth in the use of virtual worlds by current and future generations enables businesses to more effectively target this demographic.

Key takeaway: Virtual worlds provide a more engaging communications platform and new media channel that are more personal and effective than traditional communication tools, while reducing costs, increasing productivity and benefiting the environment.

A user-created shopping district in the Second Life® world. Though virtual worlds offer opportunities as new sales channels, they can also represent a new avenue for misuse and dilution of a brand holder's intellectual property.

Credit: Ramona Forcella; Creative Commons Attribution 2.0 Generic License.

7 What legal issues should I consider even if my business does not yet have a virtual world presence?

Even businesses that do not yet have a virtual world presence may face legal issues as a result of the increased use of virtual worlds by others. These issues can include intellectual property issues, brand tarnishment and employee issues, among others. Without knowing about these risks, you cannot adequately protect against them.

- **Intellectual Property Infringement / Brand Tarnishment**—Just as with the early Internet, intellectual property infringement in virtual worlds is commonplace. Many people use famous brands in virtual worlds for their own gain or in a way that tarnishes the brand. Many virtual goods are sold with unauthorized real-world logos. Additionally, virtual knockoffs are often displayed in a way that is not consistent with the brand owners' desires (e.g., in association with adult-oriented content), resulting in brand tarnishment and damage to corporate reputation. Dealing with infringement issues in virtual worlds is often different than dealing with infringement in the real world, and requires a careful approach to avoid doing collateral damage to the brand. Monitoring your brand's use, and misuse, in virtual worlds is an important first step. Working with lawyers who are thoroughly familiar with these issues is also critical.

- **Employee Usage Issues**—Even if you have no corporate virtual world presence, employees will likely use virtual worlds from work computers. This may adversely affect your company and/or its intellectual property. If an individual using a virtual world identifies himself as an employee of a company, certain actions may be attributable to the company as a matter of law. Additionally, it is a little-known fact that some virtual worlds' terms of service agreements restrict ownership of intellectual property created in the virtual world and/or require the grant of a license to the virtual world operator and any users for any uploaded/created content (including company IP). Unless a company takes proactive steps to educate employees, and establish and enforce usage policies, this may adversely impact the company's valuable intellectual property.

Key takeaway: Even companies that have not yet leveraged the use of virtual worlds can face legal issues as a result of their use by others. These challenges can best be met by creating a virtual worlds brand strategy now, educating employees and adopting virtual world usage guidelines for employees.

A user-created statue of Justice in the Second Life® world. Virtual worlds raise new legal
questions on issues as varied as employment law and intellectual property.

Credit: Patadx Pessoa; Creative Commons Attribution 2.0 Generic License.

8 What legal issues must we address if adopting a virtual world presence?

Businesses that use virtual worlds without understanding the legal ramifications run similar risks as when doing business in a foreign country without understanding the local laws. Organizations considering a virtual world presence need to address a number of key legal issues, including intellectual property issues, terms of service drafting and enforcement issues, virtual world currency and commerce issues, data privacy and protection issues, employee issues, tax issues and more.

- **Intellectual Property**—It is important to develop a comprehensive strategy to protect your IP and minimize liability to others. The need to protect virtual world items and currency from unauthorized copying and marketplaces raises many unique issues. Care must be taken not to inadvertently give up or license any IP rights through employees' assent to disadvantageous terms in a virtual world's terms of service. Leveraging the DMCA protections that shield you from certain copyright infringement liabilities requires developing and implementing a sound DMCA policy. Using an intellectual property attorney with specific knowledge of these and many other virtual-world-specific IP issues is critical.

- **Terms of Service Agreements**—Virtual worlds business models and features are varied, and terms of service agreements must be customized to take into account your specific business model and features. Knowing how and when to enforce terms of service violations requires careful consideration of the issues and knowledge of the potential ramifications.

- **Tax**—Gains from virtual worlds currency and sale of virtual goods raise tax concerns. Several countries have already taken steps to track and tax such gains. Many more, including the United States, are actively assessing these issues and considering legislation. Developing preemptive tax strategies for gains generated in virtual worlds could help avoid future tax issues.

- **Data Privacy and the Children's Online Privacy Protection Act (COPPA)**—Privacy issues are relevant to all online technologies, but unique issues arise in connection with virtual worlds. Due to the significant use of virtual worlds by children, and unique privacy issues associated with the collection of data from children, understanding and abiding by COPPA are critical.

Key takeaway: Legal issues in virtual worlds require a legal team highly experienced with the virtual worlds industry and its business models, the unique legal issues that arise, and the tools and tactics available to maximize protection and minimize liability when dealing with virtual worlds issues.

9 Why did Pillsbury form a Virtual Worlds & Video Games Team?

Pillsbury has a long tradition of developing multidisciplinary industry teams when an emerging technology or business opportunity is impacted by, and requires advice on, diverse legal issues taking into account specific nuances of the industry. Oftentimes, this advice requires comprehensive knowledge of both the substantial law and the technology/business opportunity. We see virtual worlds and video games as industries that involve cutting-edge legal issues spanning multiple legal disciplines and require specific knowledge about the industry now and the depth of experience and insight to predict where it is going.

Due to the scarcity of legal precedent specifically addressing virtual worlds legal issues, we assembled a team of nearly 20 lawyers well-versed in the virtual worlds and video games markets who can best advise and help clients implement legal strategies relating to virtual worlds legal and business issues.

The feedback we receive from clients continues to validate our decision to form our Virtual Worlds & Video Games Team. We routinely hear that clients have switched to Pillsbury because they grew tired of having to educate their former lawyers on what virtual worlds are, how the technology works and the business models and opportunities that exist. Our clients express appreciation at the team's in-depth knowledge of the market and our proactive approach in raising and advising on legal and business issues, often ones of which they were not even aware. Pillsbury's clients report that working with our virtual worlds team has dramatically reduced ramp-up time and associated costs when dealing with virtual worlds legal strategies and issues.
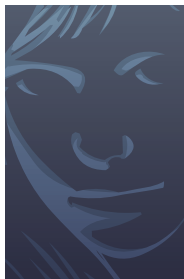
Key takeaway: Pillsbury was the first major law firm with the foresight to understand the significant business opportunities relating to virtual worlds technology and the insight and experience to understand and fill the unique and diverse legal needs that are presented for companies leveraging this technology.

10 How can Pillsbury help us identify and address legal issues and opportunities in virtual worlds?

Pillsbury's Virtual Worlds & Video Games Team lawyers represent many of the leading companies active in virtual worlds and are active participants in the industry. Team members:

- Leader of Virtual Worlds & Video Games team is the current Advisory Board Member and Chair of Legal Committee of the Association of Virtual Worlds.

- Developed www.virtualworldlaw.com to address legal issues associated with virtual worlds, multiuser online games, and the emerging 3D internet.

- Team members are active in SL Bar Association in the Second Life® world.

- Since 2006, we have hosted a monthly SD Forum in our Silicon Valley office and a SIG focused solely on virtual worlds. We speak regularly at industry conferences worldwide.

- We regularly issue alerts and advisories tracking issues and trends regarding virtual worlds and video games.

- Team members are involved in American Bar Association Patent, Trademark and Copyright Committee; Section of Science & Technology Law, Virtual Worlds and Multiuser Online Games Committee; Section of Intellectual Property Law, Special Committee on Computer Gaming; Intellectual Technology Law Association
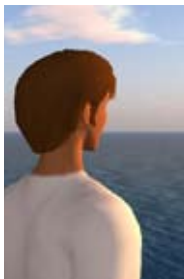
Key takeaway: Pillsbury's Virtual Worlds & Video Games Team has the depth, breadth, experience and international reputation that you can rely on to handle all of your virtual worlds legal needs.

About Pillsbury's Virtual Worlds & Video Games Team

Pillsbury's Virtual Worlds & Video Games Team includes attorneys who are at the forefront of issues central to the virtual worlds and video games industries. We are a multidisciplinary legal team that understands the business and technology issues involved with virtual worlds and video games, assisting clients across the entire spectrum of legal matters and business opportunities. Across our 14 offices in the U.S., Europe and Asia, we represent some of the largest companies in these industries and some of the most promising startups and emerging growth companies.

- Intellectual property: patent, trademark, copyright protection and enforcement in virtual spaces
- Open source software and content issues
- Agreements and licensing, including drafting and enforcing terms of service agreements
- Virtual items and currency—strategies for protecting and tactics for enforcing your rights
- Corporate law: formation, financing, policies and procedures
- Employment law and employee virtual world usage policies
- Privacy and data protection, including Children's Online Privacy Protection Act (COPPA) compliance
- Litigation and alternative dispute resolution
- Financial services: virtual currency, exchange and regulatory issues
- Tax advice for virtual worlds activity
- Regulation: law enforcement surveillance, gambling law, FCC and DOJ issues

About Our Firm

Pillsbury is a full-service law firm with market-leading strengths in the technology, energy, financial services and real estate sectors. With offices in the world's major financial and technology centers, we counsel clients on all aspects of global transactions and litigation. Our multidisciplinary teams allow us to anticipate trends and offer a 360-degree perspective on complex business and legal issues—helping clients take greater advantage of opportunities and better mitigate risk.

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