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Questions about accountability and illegality of virtual rape

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Questions about accountability and illegality of virtual rape

by

Melissa Mary Fenech Sander

A thesis submitted to the graduate faculty
in partial fulfillment of the requirements for the degree of
MASTER OF SCIENCE

Major: Journalism and Mass Communication

Program of Study Committee:
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Ames, Iowa

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*“Dedication is not what others expect of you, it is what you can give to others.”
-Unknown*

ABSTRACT

Virtual rape is not a new phenomenon in virtual communities, as Julian Dibbell's 1993 article pointed out, but it is beginning to gain attention in some scholarly circles. Of the articles specifically covering virtual rape, most focus on whether or not virtual rape is "real" while some attempt to isolate its social construction. Only one scholar to date has argued the legality of the offense, but limited the discussion only to consensual virtual rape. With this in mind, this thesis is focused on defining non-consensual virtual rape, comparing and contrasting it to other types of online deviance such as cyberstalking, sexual harassment, cyberbullying, flaming, etc., contextualizing the distinction between rape and virtual rape, and applying First Amendment dialogues and arguments to determine its current legality in the United States. Since virtual rape is considered speech or expression, this thesis concludes that it is currently protected by the First Amendment, but that with proper "digital DNA" as evidence, victims may seek retribution in civil court against the aggressor and possibly against the owner of the virtual environment in which the virtual rape occurred.

CHAPTER 1: INTRODUCTION

Today, the public has easier access than ever before to the Internet and to the technology that can get them there. This access capability coupled with more advanced computer systems and extensive communication applications and accessories, enables individuals to form virtual communities through chat rooms, chat clients, multiple protocol chat clients, message boards, newsgroups, multi-user domains/dungeons (MUD)¹, massive multiplayer online games (MMOG), and more.

As in any kind of community, however, virtual ones have their share of a range of crime and violence triggered by greed, lust, rebellion, revenge, curiosity, celebrity, adventure and power (Grabosky, 2007). One such type of cyber violence that is currently on the rise is a controversial antisocial sexual behavior widely termed *virtual rape*, the act of sexually assaulting another participant's avatar in a virtual community. This analysis accepts that victims of virtual rape experience real emotional distress and harm. For victims, there is nothing *virtual* about virtual rape. While the term *virtual* can hold many definitions, it should be made clear that the use of the term in this paper in conjunction with *rape* does not signify the action as *almost*, *nearly*, or *in essence*. *Cyber violence* is a term used to describe "online activities which have the potential to harm other via text and other 'digital performances'" (Williams, 2006, p. 25). Williams added that these activities emerge in textual, visual, and aural forms and asserted that this type of violence is not physically experienced. Although cyber violence is not a threat to the physical person, more often than not the experience can potentially serve to alienate victims, driving them out of their virtual

¹ MUDs have alternately been called shared virtual environments (SVE), collaborative virtual environments (CVE), and virtual worlds (VW).

communities. Conversely, a quick glance through chat room and message board discussions on the topic also reveals another line of thinking related to virtual rape—that it is nothing more than online sexual harassment and should be treated no differently. Users who make this argument claim that because virtual rape occurs in a mediated environment, the act is fairly harmless and victims should be able to separate themselves easily from the violence. Common solutions offered by users who make this argument are to leave the virtual environment, physically turn off the computer, or get over it.

While the controversy of virtual rape versus online sexual harassment gains steam and international attention, a more specific discussion of its cause is also being revealed.

Barak (2005, p. 83) argued:

The lack of clear legal boundaries, the absence of visible authorities and enforcement vehicles, and the absence of significant sanctions encourages people with criminal intention to do what they would have been restrained from doing in offline situations.

As such, the analysis presented here examines the legal implications of such antisocial sexual behavior, especially due to the lack of accountability in cyberspace and to the freedoms afforded by the First Amendment. Because virtual rape stems from a lack of accountability, the deviant act threatens to spread and become a trend for some virtual communities in which the individual's experience may be more important than the collective experience.

Feeding the flame of unaccountability in cyberspace is the level of anonymity provided by the Internet that is not possible in the real world. For example, some characteristics like eye color, skin color, height, and weight can work to disclose the perpetrator's identity. "In cyberspace, one can achieve perfect anonymity or perfect pseudonymity" (Brenner, 2004). In Brenner's non-exhaustive description, this means that a man can be a woman, a child can be an adult, and a foreigner can pass for a native (and vice

versa). Moreover, with adequate technical expertise, the aggressor can easily and sufficiently cover his or her tracks. Turkle (1995) even suggested that anonymity and the “perceived fluidity of identity in online life” could be what captivate the “Net-Generation,” the children of the baby boomers who grew up with television, video games, computers, and the Internet as the norm (Leung, 2004, p. 335).

One venue affected by claims of virtual rape is Second Life. The brainchild of Linden Lab, Second Life is “a 3D virtual world where users can socialize and create using voice and text chat” (*What is Second Life?*, 2009). Registered players, called residents, can explore a completely player-constructed universe. Residents can buy “Linden dollars” via credit card with which to purchase land, build their own house or business, or use or purchase endless other user-created items. In 2007, Linden Lab boasted more than two million Second Life residents, while the number of *active* users actually calculates out to about 230,000², as confirmed by Chief Technology Officer Cory Ondrejka (Terdiman, 2007). Second Life, according to Linden Lab, is not meant to be a confrontational environment. Quite the contrary, it was originally developed as a tool “for businesses, educators, non-profits, and entrepreneurs to develop a virtual presence” and as a place for its residents to explore opportunity, entertainment, and other experiences (Linden Lab, 2009). Linden Lab also envisioned Second Life as a place for residents to experience what they consider their ideal lifestyle; to have a “richly rewarding experience, filled with creativity, self expression and fun” (Community Standards, 2007). As in real life, however, residents’ ideal lifestyles vary with some being much more deviant than others. In fact, varied and alternative lifestyles are

² The number of Second Life users is thought to be exaggerated for two reasons: 1) Many users register for an account, login only once, and never return and 2) In Second Life, individuals can have up to five different residents, with each avatar counting toward the total population (Terdiman, 2007).

valued enough in Second Life to constitute the in-game sales of genitalia, sexual poses, an array of sexual equipment, and even consensual virtual rape. A report on www.informationweek.com said,

Users can buy outfits to dress their avatars provocatively, or ‘skins’ to make them appear nude. Default avatars have no genitalia, so users need to buy them. Likewise, users can buy equipment, ranging from realistic-looking beds and other furniture to fanciful torture devices used in BDSM fantasies. (Wagner, 2007)

The same article quoted Philip Rosedale, founder and CEO of Linden Lab as saying, “The presence of sex as an aspect of creative expression and playful behavior in a place like this is healthy, because it indicates we’re doing something right.” Rosedale added, “People’s assessment of how much sex is going on in Second Life is overblown.”

Overblown or not, Second Life has aimed to proactively discourage the large variation in deviance by creating a set of Community Standards (see Appendix B). The Community Standards sets forth its goal to “treat each other with respect and without harassment, adhere to local standards as indicated by simulator ratings, and refrain from any hate activity which slurs a real-world individual or real-world community” (Community Standards, 2007). The Community Standards in Second Life also defines what it calls the “Big Six,” which are a set of behaviors that, if violated, “result in suspension or, with repeated violations, expulsion from the Second Life Community” (Community Standards, 2007).

But Second Life did not stop there. In January 2007, according to Wagner (2007), Second Life began to crack down on child pornography and alternative behaviors such as *ageplay*, a form of role play in which an adult-controlled avatar takes on the identity of a child avatar while interacting with an adult avatar. Wagner (2007) stated that ageplay has

allegedly never been permitted on Second Life but did not explain how administrators were cracking down on the behavior. Emily Semaphore, manager of an ageplay club in Second Life called Jailbait, said in an interview that about half of all ageplay is nonsexual and innocent and the other half is sexual (Sklar and Semaphore, 2007). Unfortunately, and even with basic ground rules in place, violations of the community standards occur on a daily basis in this seemingly docile and safe environment.

The makers of Second Life themselves admit to this in their newsletter. The June 24, 2006 issue of *Second Opinion* stated “assault is the number one type of abuse reported in-world” and declared, “Assault in Second Life is the same as assault in the real world...” (Police Blotter, 2006). A police blotter posted on November 26, 2007 reported that 11 out of 25 recent disciplinary actions taken by the Second Life Abuse Team revolved around assault (Police blotter, 2007). Most of the players who committed these offenses were either warned or suspended for a day. Among the 25 most recent wrongdoings as of November 26, 2007, two blots involved harassment—one sexual—in which both players were suspended for only one day.

Backing up Second Life’s Community Standards is the Second Life Terms of Service (*Terms of service*, n.d.; see Appendix A) agreement which requires users to agree that they will not use the game as a channel for criminal acts or illegal purposes, and absolves Linden Lab of the responsibility to resolve complaints although it can mediate disputes, if necessary. However, who is accountable when the creating entity does not hold itself responsible for the negative aspects of its created environment?

Along with accountability, First Amendment rights must also be considered. In 1997, the U.S. Court of Appeals affirmed a 1995 U.S. District Court decision to dismiss the case of

Jake Baker (U.S. v. Alkhabaz), a University of Michigan undergraduate student who sent a number of ominous email messages and stories detailing the sexual victimization of females to correspondent Arthur Gonda. The decision was grounded in concern for the abridgement of First Amendment freedoms as Circuit Judge Boyce F. Martin, Jr. stated that the emails did not constitute a true threat³. The emails surfaced after Baker surrendered his hard drive in a University investigation into one of his fictional stories that detailed the rape, torture, and murder of a female dormitory neighbor which was posted on an Internet newsgroup and (O'Neil, 2001). The fictional story was dismissed as being simply that—a story protected under the First Amendment because there was only the use of textual description and no intended harm or threat. The Jake Baker case points to an important question: Is Internet communication (aural, textual, and visual) protected under the First Amendment if it causes emotional harm or distress to the victim? This begs the question of where the line is drawn separating protected free speech from harmful speech that can be enforced and, if it falls into the latter category, how it should be classified. But a static story is significantly different than a virtual environment like a chat room or a MMOG specifically due to *real-time interaction* between users. Real-time interaction is what makes virtual environments significantly different from other mediated environments (newspaper editorial columns, books, etc.) and allows harm from communications within those environments to be greater.

³ A “threat” is a recognized category of expression which warrants no First Amendment protection. E.g., *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 773-74, 114 S.Ct. 2516, 2529, 129 L.Ed.2d 593 (1994). However, only communications which convey “true threats” (as opposed to, for example, inadvertent statements, mistakes, jests, hyperbole, innocuous talk, or political commentary not objectively intended to express a real threat) are “threats” outside the embrace of the First Amendment's guarantees. *Watts v. United States*, 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (per curiam). *Accord, Cox*, 957 F.2d at 265-66; *DeAndino*, 958 F.2d at 148-49; *Lincoln*, 462 F.2d at 1369. (*U.S. v. Alkhabaz*, 1997, at 1505)

Because there are no real legal repercussions for virtual rape, there are also very few officially noted cases of these offenses. However, there is evidence in user-generated web logs and message boards that it is becoming more prevalent and problematic. For example, in April 2007, Brussels police began an investigation of the alleged virtual rape of a Second Life user as reported by two Belgian newspapers, *De Morgen* and *Het Laatste Nieuws* (Duranske, 2007; Lynn, 2007; Weber, 2007). To protect users, Belgian law enforcers created police officer avatars within Second Life to patrol and investigate the infraction.

Rape, virtual or otherwise, is an offense many refuse to talk about. The topic, according to MacKinnon (1997b), is “an historically mutable construct” (p. 9) that inevitably “would follow humankind into the next social dimension as it has followed humanity from the hurling of the first stone” (p. 10). Instances of virtual rape in Second Life and LambdaMOO demonstrate that accountability of users and creators is important in virtual communities in which people now more readily and voluntarily—and sometimes involuntarily—participate (Bugeja, 2007).

The vague set of rules set forth by Linden Lab that essentially leave assigning accountability the exclusive burden of game participants gives the inhabitants of this virtual society maximum latitude to engage in behaviors that disregard the dignity of other players in the Second Life sphere. Maintaining the safety of this domain will enable players to create a unique space where an idealized existence can be allowed to flourish.

Because incidents of virtual rape, like those of offline rape, are often kept secret, one goal of this paper is to bring light to this emerging type of cyber violence. Understanding and acknowledging its occurrence can help users, moderators, managers, and creators of virtual communities be aware of this type of assault and recognize its widespread existence.

The issue of virtual rape will require some out-of-the-box thinking but solutions to the problem will be well worth the efforts.

Members of virtual communities should be aware and cautious of cyber violence in order to protect the integrity of their virtual communities. Improved regulation must be demanded from those who monitor and participate in the game because each inhabitant's virtual reality extends to that of the entire community.

The analysis presented has considered accountability and anonymity issues of the Internet and Second Life and identified general cyber violence enforcement issues. It also discussed virtual rape as a growing problem within virtual communities.

A first objective of this analysis is to examine closely the Second Life Terms of Service (TOS) agreement and Community Standards as provided by Linden Lab and Second Life to determine the limitations of personal accountability and corporate accountability. A second goal of thesis is to provide a look at the protections under the First Amendment to determine whether Internet communication that harms is protected. Supporting Arguments can be made that events, morally acceptable or not, occurring in virtual environments could be protected under the First Amendment. Thirdly, this study will use case law to determine if there are certain instances in which virtual rape can be punishable by law or at least regulated in some way.

Subsequent chapters will cover the following: Chapter 2 discusses previous research on aspects of virtuality and virtual rape; Chapter 3 describes the processes used to locate case law and statute used in the analysis, to conduct legal research, and to analyze documents provided to Second Life users by Linden Lab; Chapter 4 reiterates and answers all posed research questions, providing a detailed analyses of the Second Life TOS and arguments

related to First Amendment protections of Internet speech and illegality of virtual rape;
Chapter 5 summarizes findings, their implications and significance, presents suggestions for
solutions, and provides direction for future research.

CHAPTER 2: LITERATURE REVIEW

The preceding chapter established the lack of accountability in cyberspace and how it has given rise to personal assaults such as virtual rape. Because virtual rape is as taboo (and controversial) in virtual communities as rape is in reality, it is necessary to define the terms and explore the literature relevant to this type of cyber violence. This chapter will detail key terms and ideas, explain William James' concept of multiple realities, and describe new perspectives of virtual environments. With these foundational ideas outlined, a lineation of cyber violence will be established with specific attention to where virtual rape may fall on that scale.

Cyberspace and Virtual Communities

While at least two scholars believe cyberspace and virtual reality are separate entities, several others use the two terms interchangeably, including MacKinnon (1997b), Rheingold (1992), and Stone (1992). This paper will use the two terms interchangeably.

Although Jaron Lanier first used the term *virtual reality* in 1986, William Gibson first coined the term *cyberspace* in his 1984 fictional novel *Neuromancer*, describing it as "a consensual hallucination experienced daily by billions" (p. 69). Scholarly works have referred to cyberspace as "collections of common beliefs and practices" (Stone, 1992, p. 85) or as "the result of the production of signs in a context which maintains the coherence of the fictional frame" (Edelmann, 2005, p. 3).

Interestingly, the latter definitions of cyberspace indicate that it does not necessarily have to be experienced via electronic technology. MacKinnon (1997b) said virtual communities form through opinion/editorial pages in newspapers. This is done by creating a space—physical in this case—where interested or concerned readers can openly converse

and share their opinions, thoughts, and sentiments. Computers are therefore not a precondition to the attainment of virtual reality, according to MacKinnon. This suggests that virtual reality and real life are both constructed and that these two realities may overlap in such environments as virtual communities.

Virtual communities themselves exist neither in a physical nor in a geographical sense, but are socially constructed in a provided online environment by geographically dispersed individuals who share similar interests. That is to say, digital representations that inhabit virtual communities are not usually located within the same geographic area in real life, but the virtual community itself resides at a specific web address where those geographically scattered avatars may gather.

Sohn and Leckenby (2007) defined virtual community as “a self-organizing social collectivity created and sustained through the communication efforts of voluntary participants who are socially and geographically dispersed” (p. 435). Williams (2000) defined it as “the existence of thousands of electronically linked individuals” (p. 99).

While these definitions are indeed correct, a virtual community should ultimately be described as a perceived collectivity of socially and geographically scattered individual voluntary participants sharing similar interests or goals and communicating via computer-mediated networks within the confines of a specific domain of the larger *cybersociety*. As defined by MacKinnon (1997a), “cybersociety is the emergence of community from a complex set of social formations in a space enacted by mediating technology. In the language of popular culture, it is the society within virtual reality (VR) or ‘cyberspace’” (p. 206). Nunes (1997) submitted that cyberspace “creates a metaphorical world in which we

conduct our lives” (p. 163). Cyberspace can essentially be thought of as a computer-human matrix in which multiple realities are possible.

Multiple Realities

William James (1890) wrote that there are a number of universes within and subordinate to our whole universe. It should be noted that the term universe here is being used to describe the *scope of any individual’s known reality*. Of the many realities James described, one was that of the physical world described as the world of sensory experiences, “of physical ‘things’ as we instinctively apprehend them, with such qualities as heat, gravity, electricity, all existing as such within or on the surface of the things” (James 1890, p. 292).

According to Holzner (1968), this physical realm or reality also includes the qualities of color and sound. From this view it is understood that if something is not in one’s vicinity or current pool of knowledge, then it does not exist. James (1890) explained, “Each world, whilst it is attended to is real after its own fashion; only the reality lapses with attention” (p. 293). Rheingold (1992) later said of his first journey into virtual reality that his “consciousness had suddenly switched locations” (p. 255) and described his experience as “a form of out-of-the-body experience” (p. 256) indicating a conscious switch from one reality to another. However, as the novelty of entering a virtual world erodes and becomes a daily routine and immersion into virtual environments becomes a norm, there emerges an illusion of non-mediation. That is, immersive technology serves to split the human senses: as the user is immersed in virtual reality, s/he loses the connection to reality and the virtual reality, for the time being, becomes the actual reality.

James (1890) described seven different kinds of realities in his book but submitted that any number of realities can exist for any person. Based on these observations it can be

surmised that the physical reality in which we live does, in fact, come close to being similar to what is considered a virtual reality especially when behaviors, social learning, and construction of reality are considered.

By Holzner's (1968) standards of reality, virtual reality is potentially the exact same thing as James' physical reality. Space (web address) and time (chat history), referring to where and when, are both factors in virtual reality. Symbols are another shared extension of both worlds; an America Online logo is as visually recognizable as a handicapped symbol. Values are also shared; persons reading a message board posting may interpret it differently. Communication, being an inherent quality of reality, not only exists in virtual reality but also helps shape it just as it does in reality. The success and survival of a society is based on good communication and individuals within societies use communication to solve problems and to create better situations than previously existed (p. 8-9).

In a 1999 journal article, Derry described social learning to be an important part of knowledge construction. She argued that peer interaction (such as what happens in massive multiplayer online role-playing games or MMORPGs) "is the driving force behind the construction of new knowledge, as it forces students to accommodate differences between their beliefs and those of others" (p. 207). This supports that community rules are established by the collective members of that society with regard to who is part of the community.

Powers (2003, p. 193) noted:

The combination of speech act theory and realism about intention suggests a more inclusive realism since it grants as real such entities as performative acts (and intentions so to act), even when they are put into effect by the mediation of computer programs.

This is to say that virtual reality is as real to some users as physical reality especially when they are deeply immersed in the virtual environment and the connection to real life weakens. In essence, Powers (2003) said that in reality, we bring situations closer to us, and in virtual reality, we do the same – the intentions of others matter. Berger and Luckmann (1989) also argued that an alternative to a primary socialization exists; there is a secondary socialization, which they describe as “the internalization of institutional-based ‘sub-worlds’” (p. 138), which also lines up with James’ (1890) ideas.

The treatises of the foregoing writers indicate that many parallels can be drawn between reality and virtual reality. Due to this, inferences about virtual reality environments and their inhabitants have been offered based on inferences of real life environments and inhabitants.

Communication and Technology Theory

Since the coming of the Internet, a number of scholars have created or adapted theories of communication, media, and technology to explain the phenomenon of the Internet and its apparent societal effects. One of the doctrines overarching the majority of these theories is *technological determinism*.

Technological determinism operates under the notion that technology drives social change; that society and its habits are influenced and shaped by technology; that technology changes everything without changing itself. Following closely and supporting technological determinism were Jacques Ellul, Neil Postman, and Marshall McLuhan.

Jacques Ellul (1987/1989) believed that the natural environment and social environment would take a backseat to the booming technological environment that humankind has created for itself; that those two original environments would become

secondary to the technological environment. He said, “Nature and society still exist. But they are without power—they no longer decide our future” (p. 134). Ellul maintained that because we have technological means of taking action against natural disasters, those disasters can be effectively avoided. Likewise, he said that in the social environment we continue to have politicians, police, and administrative organizations, but that “each of these has to have technological gadgets to make it more efficient and active” (p. 135).

Because technology is consuming the social environment, Ellul (1987/1989) believed that people would have to quickly adapt, accept total change, and complete an “essential transformation” (p. 136). He argued that this adaptation would have to be instantaneous rather than slow and calculated. This immediate, essential adaptation poses a problem for the aforementioned police, politicians, and administrative organizations of the United States: Because of the rapid development and evolution of technology, these societal regulators have neither the resources nor the knowledge to catch up or keep up with the technology and the way it is being negatively utilized. Ellul (1987/1989) correctly predicted:

On the one hand, there will be a kind of aristocracy marked off by its total and infallible adaptation to technical gadgets and the technological system, and on the other hand there will be a vast number of people who are outdated, who cannot use the technology, who are powerless, who are still at the social stage but who live in a technological environment for which they are totally unadapted (p. 138-139).

Neil Postman believed profoundly that technology consumes society and “creates the ways in which people perceive reality” (1992, p. 21). Postman wholeheartedly agreed with Ellul that social institutions have little to no time to catch up and educate themselves on new technologies. Postman said, “Almost daily, it seems, new technologies come on the scene and our social institutions don't have time to assimilate them and reorganize themselves to accommodate the demands of the technology” (Lamb & Postman, 1992) and concurred that

new technologies help specific groups and harm others; that the “advantages and disadvantages of new technologies are never distributed evenly among the population” (Postman, 1998). He held that the groups helped most by technology are corporations and large-scale institutions (i.e. military, banks, etc.) rather than the mass public. Most importantly, Postman observed that “Technological change is not additive; it is ecological. . . . A new medium does not add something; it changes everything” (1998).

Marshall McLuhan coined two powerful expressions: “The medium is the message” (1964) and the “global village” (1962). The first phrase means “we can know the nature and characteristics of anything we conceive or create (medium) by virtue of the changes—often unnoticed and non-obvious changes—that they effect (message)” (Federman, 2004). More simply, understanding the changes technology incites produces an understanding of the technology itself. The idea of the “global village” refers to the fact that the advent of electronic media simultaneously shortened the distance between geographic locations while instantaneously sending the same information to all receivers at the same time.

While the two phrases in their original contexts refer to the electronic media of McLuhan’s time, they can be applied to Internet technology and the virtual communities of today. Unlike television in McLuhan’s time, which only communicated information from one entity to many, the Internet carries a number of opportunities for one-way and two-way (many-way) social interaction. Barr (2000, p. 118) listed a number of means in which interaction can occur: 1) one-to-one messaging (email), 2) one-to-many messaging (listserv, spam), 3) distributed message databases (USENET news groups), 4) real-time communication (IRC), 5) real-time remote computer utilization (telnet), and 6) remote

information retrieval (World Wide Web, ftp). Understanding the multi-modal nature of the Internet helps to explain the nature of the Internet itself and the idea of a global village.

Two additional theories that may hold some significance in understanding (anti)social interactions in cyberspace are social presence theory⁴ and media richness theory⁵, though neither was founded with Internet technology or cyberspace in mind.

Perspectives of Virtual Environments

Schroeder (2002) wrote that a number of methods ranging from various quantitative experimental studies to qualitative participant observations have been used to study virtual environments. He also noted that despite the number of studies that have taken place, “there are no studies that have related ‘online’ and ‘offline’ life” (p. 10) although text-based social multi-user domains (MUDs) have been compared to real life. Williams (2000) argued that most researchers base their assumptions on the separateness of real and virtual—a real/virtual dichotomy—commenting that the connection between the two realities is inevitable and those actual lives are affected by abusive cyber-actions. Barak (2005) said, “Sexual harassment and offense on the Internet . . . drive away Net users as well as cause significant emotional harm and actual damage to those who remain users, whether by choice or by duty” (p. 78).”

Schroeder (2002) applied a framework of frames and bandwidths to virtual environments hypothesizing that each virtual environment or virtual reality system creates its own frame for encounters within itself and anticipated that if this theory applies at the individual level, it would also be generalizable to a larger population.

⁴ For more information on social presence theory, see Short, Williams, & Christie (1976), Biocca, Harms, & Burgoon (2003), and Holmes (2005).

⁵ For more information on media richness theory, see Daft & Lengel (1986) and Dennis & Kinney (1998).

Additionally, MacKinnon (1997b) applied social construction of reality to virtual rape as well as attribution theory, and contended that it is rooted in the social construction of rape. MacKinnon (1997b) determined that virtual communities and netizens (citizens of the Internet) will eventually find a way to adapt to the phenomenon of virtual rape and calls for a reassessment and reconstruction of rape as an assurance of protection from virtual harm.

Accountability

As in the real world, virtual communities set rules—sometimes unwritten or unspoken—for their inhabitants. These rules vary in different communities and dictate the behavior of an individual when participating in a given community. While rules are easy to establish, they are nearly impossible to enforce effectively. Communities based on egalitarian or libertarian principles admonish any kind of governing system in which one individual may have more power, opportunity, or authority over another. Egalitarian environments operate on the ideal that all users are created equal; that everyone should have the same political, social, civil, and economic rights. In virtual communities functioning under egalitarianism, punishment can become an issue when punishment must be distributed for varying degrees of cyber violence. Libertarianism, on the other hand, draws off the notion that individuals should have as much freedom as possible with minimal interference from authorities. Many virtual communities are based on these principles and both emphasize self-regulation as a solution to cyber violence. But with no restraints, consequences, or system of accountability in place, virtual communities following these doctrines may face more cyber violence than communities with strict, enforceable rules in place and systems of accountability.

Accountability, the responsibility of taking ownership for one's actions (taken or not taken) and the ability to explain and/or justify them, in virtual communities is a primary cause of cyber violence and is no doubt a timely issue that needs to be addressed. Kozlovski (2007) wrote, "In a democratic society, those invested with policing power—either public or private—must be held accountable" (p. 108). Because many entities (users, law enforcers, service providers, etc.) interact dynamically with each other in cyberspace, it is essential that they work together to provide a safe and free environment.

Failure to enforce rules of accountability in virtual communities can lead to cyber violence, in which irresponsible and unaccountable users abuse the virtual environment via computer-mediated networks (Thomas and Loader, 2000). Cyber violence can leave responsible users unhappy, worried, frightened, or worse, as in cases of virtual rape.

Lineation of Online Harassment

While most cyber criminals are driven by a set of motivations, antisocial behavior and communication result in a type of cyber violence called online harassment. Online harassment, arguably one of the most common offenses encountered by Internet users, can be split into a number of escalating subcategories including flaming, grieving, cyberostracism, cyberbullying, cyberstalking, and sexual harassment.

Flaming

In cyberspace, flaming describes the antagonistic and offensive interaction between two or more Internet users and is generally associated with the "hostile expression of strong emotions" (Lea, et. al., 1992, p. 89). This type of behavior can occur in a number of virtual environments including chat rooms, message boards, news groups, email, instant messaging, multi-user dungeons (MUDs), and massively multiplayer online role-playing games

(MMORPGs) and can be textual, vocal (in environments that support voice chatting), or both. Flaming, according to Williams (2006), is one of the least serious online harassment offenses and can be “considered minor in terms of violence due to the fact that their consequences never mount to anything more than a bruised ego” (p. 25). It is also the most commonly studied form of online harassment (Douglas, 2008).

Douglas (2008) observed that flaming is not always negative; that it often, in fact, serves some positive purposes; flaming can “facilitate the maintenance of a group’s norms and standards” (p. 202) because some who flame may be trying to protect other person(s) or group(s) from being hurt, or trying to uphold a community’s or group’s rules when they are violated.

Griefing

Griefing primarily affects Internet users who play MUDs or MMORPGs. Cascio (2008), Senior Fellow of the Institute for Ethics and Emerging Technologies, defined griefing as:

Taking action intended to harm the game-play of someone else—these can include attacking someone ostensibly on your own team, blocking passageways, intentionally crashing your vehicle into someone else’s, leading masses of monsters to attack unsuspecting players, using known software bugs to force another player to “crash out” of the game, and so forth.

While a number of these actions may occur by accident, Cascio (2008) emphasized that griefing is based on intent. However, it is important to note that this type of behavior is not necessarily meant to be harmful. Players in World of Warcraft, a popular MMORPG boasting more than 11.5 million subscribers (World of Warcraft, 2008) have been known to block community mailboxes with their avatars simply for the sake of entertainment and fun, and not to cause harm.

Cyberostracism

According to Williams *et al.* (2000), research has shown that being socially ignored, or ostracized, can have a number of harmful psychological results including depressed mood, loneliness, anxiety, frustration, invisibility, and helplessness. Indeed, cyberostracism, “any intended or perceived ostracism in communication modes other than face-to-face” (Williams *et al.*, 2000, p. 750), can have the same effects, and possibly be even more ambiguous than ostracism, creating more stress for a victim.

Douglas (2008) warns that while cyberostracism can be potentially damaging to a target’s self-esteem and psychological well-being it is sometimes unintentional. For example, a missed email or one set aside for a later response “may cause distress and may lead the sender (rightly or wrongly) to infer that the recipient is ignoring them” (Douglas, 2008, p. 204).

Cyberbullying

Cyberbullying often refers to the online “bullying of fellow students” (Conn, 2004) something that goes on in most, if not all, elementary, junior, and high schools across the country. In essence, cyberbullying is a type of cyber violence used by minors to torment, threaten, harass, humiliate, embarrass or otherwise target by another minor “using the Internet, interactive and digital technologies or mobile phones” (*What is cyberbullying?*, 2005).

Cyberbullying attacks can be broken down into two types: direct attacks and cyberbullying by proxy. Direct attacks occur when one minor sends hate/threatening messages directly to another student via digital technology (Direct Attacks, 2005).

Cyberbullying by proxy occurs when a cyberbully convinces another minor to harass the

victim for him or her. In these cases, the auxiliary aggressor does not realize what he or she is doing or even that they are being used by the cyberbully (*Cyberbullying by Proxy*, 2005).

Stopcyberbullying.org believes it is important to understand that this type of behavior does *not* involve adults, and that once adults become involved, it becomes cyber harassment or cyberstalking.

Cyberstalking

Also used to simply describe online harassment (Douglas, 2008; Bocij, 2006), cyberstalking is like its real-world counterpart, except it takes place in cyberspace. Victims who are persons “singled out as a target for subsequent harassment because of some characteristic or vulnerability that they have revealed in their online discussions” (Wall, 2007, p. 124) are continuously followed and harassed by their pursuers via e-mail, message boards, news groups, and other communities the victim is a part of. Existing only since the 1990s (Bocij, 2006, 2003), cyberstalking “describes the use of information and communication technology in order to harass one or more victims” (p. 160).

But while the thought of cyberstalking can seem practically harmless, it can undoubtedly have a number of distressing affects on its victims and can prove to escalate to dangerous situations (Grabosky, 2007; McFarlane and Bocij, 2003; Bocij, 2003). One case, for example, involved a rejected suitor who assumed the identity of his victim and posted messages on the Internet inviting interested persons to satisfy her rape and gang rape fantasies. Strange men appeared at the victim’s home on six occasions and she received a number of offensive phone calls. The woman was not physically hurt but became afraid to answer the phone and leave her home (Grabosky, 2007).

A number of websites have been devoted to cyberstalking in order to provide information, increase awareness, and provide help and advocacy for victims. However, Douglas (2008) observed that very little research has been done in this area of online harassment.

Sexual Harassment

Sexual harassment is defined in real life as unwanted sexual advances, exposure, or touching and is as prevalent online as it is offline (Barak, 2005), but Williams (2006) said gender/sexual harassment is less common online compared to other types of online harassment. Barak (2005, p. 78) described three types (gender harassment, unwanted sexual attention, and sexual coercion) of offline sexual harassment that ultimately define the offense:

Unwelcome verbal and visual comments and remarks that insult individuals because of their gender or that use stimuli known to intended to provoke negative emotions, . . . uninvited behaviors that explicitly communicate sexual desires or intentions toward another individual, . . . putting physical pressure or psychological pressure on a person to elicit sexual cooperation.

Sexual Assault

In real life, the US Department of Health and Human Services defines sexual assault as “any type of sexual activity” (*Sexual assault*, 2005) that is not agreed upon by all parties involved. These activities include:

- Inappropriate touching
- Vaginal, anal, or oral penetration
- Sexual intercourse that you say no to
- Rape
- Attempted rape
- Child molestation

However, due to one specific factor, the Internet once again poses a dilemma for those interested in defining online sexual harassment or assault; their definitions imply physical touch, something impossible to achieve via the Internet. Barak (2005) said, “Although the use of physical force is impossible online, victims might perceive threats to use physical force realistic on the Internet as in face-to-face situations” (p. 80). Physical force can be conveyed in a number of ways including (but not limited to) sending frightening emails and viruses, hacking the victim’s computer system, and flooding the victims email inbox. Bribes and seductions may also play a part in virtual rape (Barak, 2008).

What’s, Why’s, How’s and Who’s of Virtual Rape

So, what is virtual rape and why does it happen? How does it happen and who is most likely to be victimized? What makes virtual rape so real to its victims? Is it the embodiment of the user in an avatar or the richness or vividness of the environment? Finally, is virtual rape just a harmless type of sexual harassment, or should it be seriously enforced? In the next sections, these concepts of modality of interaction between avatars and their virtual environments will be explored.

What It Is

As mentioned previously, a given situation of this kind requires the characteristic of physical harm or sexual penetration in order to be considered sexual assault. Indeed, the Internet and its virtual environments are understood to have the inability to provide a sense of touch (thus the invention of many devices meant to provide it artificially). Nevertheless, since 1993, a number of claims of what netizens, citizens of the Internet, are terming virtual rape have been on the increase.

Dibbell (1993) first explored this phenomenon in an article called “A Rape in Cyberspace.” Later in a book called *My Tiny Life* (1998) he documented what is considered the most comprehensive record of the first virtual rape or cyber rape on the Internet⁶.

Virtual rape, like virtual community or cyberspace, is hard to define not because it is an obscure idea, but because in real life, a consistent definition of rape has been agreed upon neither by the public nor by authorities. Kilpatrick (2000) noted that definitions and statutes of rape differ from state to state. In an article for the National Violence Against Women Prevention Research Center, Kilpatrick (2000) laid out a detailed history of the evolution of the definition of sexual assault and rape. The history showed that the legal definition has changed significantly from the common law definition (before the 1960s) to a more detailed and inclusive definition in 1962 (as established by the US Model Penal Code) and currently, to an even more accurate and comprehensive federal definition. The federal definition casts rape, in essence, as non-consensual, age indiscriminate, unwanted, unwelcome sexual *contact* of *any* type. None of the definitions differentiates between the sex of the assaulter, or discriminates between sexual assault achieved by threat or force or by other means.

We may now move this social construction into cyberspace where the violent, non-consensual sexual assault of another individual is termed virtual rape. As quoted and referenced in MacKinnon (1997a, p. 228) and Williams (2000, p. 101), *virtual rape* is defined:

A sexually-related act of a violent or acutely debasing or profoundly humiliating nature against a character who has not explicitly consented to the interaction. Any act which explicitly references the non-consensual, involuntary exposure, manipulation, or touching of sexual organs of or by a character is considered an act of this nature. (Nancy [#587980] 1994)

⁶ For the full account, see Dibbell (1998).

Two weeks later, after the above definition and reprimand were originally suggested, the following was posted, as referenced by MacKinnon (1997a, p. 229):

Sexual harassment (particularly involving unsolicited acts which simulate rape against unwilling participants). Such behavior is not tolerated by the LambdaMOO community. A single incidence of such an act may, as a consequence of due process, result in permanent expulsion from LambdaMOO.... [*sic*]

This petition makes no requirement on mediators that they recommend expulsion in every incident; if circumstances dictate, a lesser action may be designated. But if, after due consideration, the opinion of the mediator is that the situation was extreme enough to warrant expulsion, the effect of this petition is to confirm that the community thinks that expulsion is within the scope of reasonable penalties for an act of this kind. (Linnea [#58017], 1994)

Therefore, virtual rape, in essence, is the non-consensual simulated sexual violation of a victim avatar, a visual or textual representation of the user, by an aggressor avatar via online interaction. The two above definitions materialized in response to an attack on a virtual community by one of its own members.

Why It Happens

Now that virtual rape has been sufficiently defined, we can begin to understand the basic reasons behind the antisocial act. Some feminist theory postulates that real life rape is the product of the long-standing male need for power. Ellis (1989) said, “Feminist theory considers rape to be the result of long and deep-rooted traditions in which males have dominated nearly all important political and economic activities . . . and essentially regards rape as a male response to the social inequality between the sexes and the tendency of this inequality to affect the way men and women interact sexually” (p. 10). Ellis explained that the feminist rationalization of rape regards it to be the “result of a male’s decision to behave

toward women in a possessive, dominating, and demeaning manner” (1989, p. 11) in an effort to establish or maintain dominance or control of women.

Perhaps more to the point about why rape (and virtual rape) occurs is a thought from Brownmiller (1975), who said, “Rape is not a crime of irrational, impulsive, uncontrollable lust, but is a deliberate, hostile, violence act of degradation and possession on the part of a would-be conqueror, designed to intimidate and inspire fear” (p 391).

A number of themes emerge from the thoughts of the two feminist scholars that shed some light on the question of why virtual rape occurs: hostility, possession, intimidation, fear, dominance, and most of all, power. Power is the key player in the act of virtual rape, especially after cases of virtual rape are identified (see page 34). These reasons for the violent sexual act are also mirrored previously in Chapter 1, as quoted by Grabosky (2007). Lack of accountability, as mentioned before, simply provides a better environment for virtual rape to occur.

How It Occurs and Who the Victims Are

There are a number of situations in which a virtual rape can occur. Three situations are the result of the victim being curious or inexperienced, of the victim being cyberstalked for any period of time, or of the victim being sexually harassed.

Virtual rape as a result of curiosity or inexperience seems like a strange observation at first, but curiosity is a very human trait and can get some Internet users into potentially harmful or dangerous situations. On May 6, 2007, Diana Allandale revealed her experience of virtual rape in Second Life in response to a post on VirtualToReality.com called “How exactly does ‘virtual rape’ even occur in Second Life?” (Sartre, 2007):

As to the virtual ‘rape’...my first week in-world, a male avatar invited me to a beach. Turned out to be a nude beach. I’m not a prude, and to be honest, still tend to equate dressing (and undressing) my avatar as playing with my Barbie doll when I was little. So sure, I took off my clothes, we went skinny-dipping and afterward, he suggested two poseballs. Being the newbie I was, I didn’t understand that the word “love” hovering over the top meant “intercourse”. 😊 When a cock suddenly appeared on him and he started going at it with my avatar, I will admit, my first thought was...”Hey! I didn’t consent to this!” But reason took hold, I told him I wasn’t interested and that was the end of it. A few short minutes later, I was dressed and had left him on the beach, feeling ticked off that someone would take advantage of my newbie-ness, but having learned a little about human nature. (Allendale, 2007)

From this account, it can be seen that specifically those who are unknowingly lured (new users, for example) or manipulated into nonconsensual cybersex or who are naïve or trusting of the aggressor may be easier targets than others in virtual communities.

Though curiosity and inexperience no doubt result in virtual rape, the current categorization of virtual rape by government agencies and other organizations has much to do with answering the questions of how and who.

While virtual rape falls under the category of sexual harassment in the lineation provided above, virtual rape itself, when being classified by prevention websites or referenced by government agencies, generally falls either under the category of cyberstalking or sexual harassment. It is usually first classified under cyberstalking (along with a number of other psychosocial behaviors); using cyberspace to control, harass, or terrorize a target to the point that he or she fears harm or death, either to self or to others close to him or her (Schell and Martin, 2004). If virtual rape is not specifically classified within the cyberstalking category, it is mentioned as relating to cyberstalking due to its nearly synonymous virtual interpretation to sexual harassment (Wall, 2007). However, in reference to The National Crime Victimization Survey, a Journal Gazette article by Green (2009) noted, “Harassment involves similar behaviors as stalking, but victims did not report feeling

afraid or experiencing actions directed toward them that would cause a reasonable person to feel afraid.” Sexual harassment, subsequently, is the second, larger category in which virtual rape seems to appear. Following are deeper, more detailed looks into cyberstalking and sexual harassment and what makes virtual rape so real to its victims.

Cyberstalking

In 1999, U.S. Vice President Al Gore recognized a growth in certain types of online behaviors used to harass and intimidate others and called for a report from the Attorney General. The U.S. Department of Justice report defined “the use of the Internet, e-mail, or other electronic communications devices to stalk another person” (U.S. Department of Justice, 1999) as cyberstalking. Some scholars agree with this simpler definition. However, Bocij (2002) describe cyberstalking in much greater detail:

A group of behaviors in which an individual, group of individuals or organization uses information and communications technology (ICT) to harass one or more individuals. Such behaviours [*sic*] may include, but are not limited to, the transmission of threats and false accusations, identity theft, data theft, damage to data or equipment, computer monitoring, the solicitation of minors for sexual purposes and confrontation. Harassment is defined as a course of action that a reasonable person, in possession of the same information, would think causes another reasonable person to suffer emotional distress.

Cyberstalking appears to not necessarily be driven by sexual interest⁷. Cyber-neighborhood watch program Wired Safety posits, “Cyberstalkers are often driven by revenge, hate, anger, jealousy, obsession and mental illness” (Wired Safety, 2005b). Pathé and Mullen (1997), Mustaine and Tewksbury (1999), and McGrath and Casey (2002) suggested that stalkers gain a feeling of power from knowing that they have caused fear in their victims.

⁷ Five female students were terrorized through hundreds of violent and threatening e-mails for more than a year by a male honors graduate student from the University of San Diego. The graduate student believed the women were laughing at and mocking him. The victims had never met the graduate student, who pled guilty and faced up to in prison for his crime (Attorney General, 1999).

McFarlane and Bocij (2003) typified cyberstalkers into four categories—vindictive, composed, intimate, and collective—of which only intimate cyberstalkers were fixated on winning or gaining their target’s attention. The efforts of the other three types of stalkers tended to be more focused on causing their targets fear, annoyance, irritation, and intimidation because of a perceived wrong to the cyberstalker(s) (Wired Safety, 2005b).

Because of the tactics cyberstalkers and traditional stalkers use to harass their targets, stalking of any kind has undeniable psychological and physiological effects on victims. The Rape Victim Advocacy Program (RVAP, 2005) reported that because cyberstalking is an extension of its real-life counterpart, it could conceivably cause a number of emotional responses similar to traditional stalking. These responses include fear, anxiety, nightmares, shock/disbelief, helplessness, hyper-vigilance⁸, changes in eating and sleeping habits, elevated stress levels, feeling out of control, and the sense of the loss of personal safety (RVAP, 2005). As quoted in an article on *Popular Science* magazine’s website popsci.com.au, a woman testifying in court against her now ex-husband explained how she felt about his use of Global Positioning System (GPS) technology to stalk her:

To know somebody knows where you are every second of the day and how many seconds you are at each stoplight and to yet not know how they were able to figure it out—it’s a frightening feeling. You are always constantly being watched and under surveillance. It gave me stomachaches [*sic*], it made me not sleep really well. It’s not a comfortable feeling. (Rosenwald, 2004)

So how does virtual rape fit into the cyberstalking category? If cyberstalking is an extension of traditional stalking, as RVAP asserts, consider the following: A Bureau of Justice Statistics Special Report (Bureau of Justice Statistics Special Report, 2009) estimated that about 3.4 million persons age 18 or older were victims of stalking during the 12-month

⁸ Being extremely watchful and more careful than usual to avoid danger.

period leading up to the victim interviews⁹ (p. 1). Of this estimate, it was determined that about 38,590, or approximately 13.9 per cent, of stalking victims had been raped/sexual assaulted by their attacker (p. 8). As the statistical report shows, physical attacks perpetrated by stalkers on their victims are reasonably uncommon; rape/sexual assault is the rarest of occurrences. Janet Reno warned that cyberstalking is often “a prelude to more serious behavior, including physical violence” (Simpson, 2000).

WiredSafety.org (2005a) postulated that there are three types of cyberstalking situations: 1) Online cyberstalking/harassment that stays online; 2) online stalking/harassment that moves offline or supports offline actions; and 3) offline stalking that moves online. While traditional stalking can culminate with sexual assault in a real environment, a few cases have been investigated in which cyberstalking can move offline. Gary Dellapenta was arrested by a mix of FBI agents and Los Angeles Sheriff Offices for attempting to use the Internet to solicit the rape of a female acquaintance (Simpson, 2000). Dellapenta posed as his target, leaving messages and personal ads in Internet chat rooms that included her name, address, description, and how to bypass her home security system. Additionally, the messages claimed that she had fantasies of being raped. A number of men showed up to her door to make all her fantasies come true. Dellapenta was sentenced to six years in prison under first U.S. and California cyberstalking law.

Even more fatal was the case of 20-year-old Amy Boyer. Her cyberstalker-turned-offline-stalker Liam Youens waited until she left her job at a dental office and shot her through her car window after stalking (and cyberstalking) her for years (Spencer, 2000).

⁹ Interviews were conducted January 2006 through June 2006 placing the majority of recorded stalking behaviors in 2005 (Bureau of Justice Statistics Special Report , 2009, p. 10).

Youens had purchased information about her online to more easily track her down and had created a Web site dedicated to his stalking activities and to Boyer and even detailed his plan to kill her. The Web site indicated that Youens had fallen in love with Boyer in the eighth grade and turned vengeful after she rejected him in high school. No one, including Boyer, knew about the Web site before she was killed. A significant number of cyberstalking targets may not even know they are being stalked—a marked difference from traditional stalking, which generally focuses on making the target aware of their situation.

Another dissimilarity of cyberstalking to traditional stalking is random target selection by cyberstalkers. Bocij was quoted in *The New York Times* “Online Diary” (O’Connell, 2003) as saying, “Perhaps the most unnerving aspect of cyberstalking is its indiscriminate nature. I’ve never found an offline example where the victim was selected completely at random. But there are many examples of that online.”

Sexual Harassment

Sexual harassment, as defined by the U.S. Equal Employment Opportunity Commission, defined sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature” (*Sexual harassment*, 2002). Barak (2005) argued that there is little literature addressing sexual harassment in cyberspace and points out that sexual harassment and offense on the Internet is prohibiting to the “free, legitimate, functional and joyful use of the Net” (p. 77). Barak (2005) put real life sexual harassment into three categories and noted that each also exists in cyberspace:

1. Gender harassment – unwelcome verbal/visual stimuli (comments, remarks, etc.) used to insult on the basis of gender

2. Unwanted sexual attention – unwelcome behaviors toward an individual communicating desires and intentions sexual in nature
3. Sexual coercion – exerting physical or psychological pressure on an individual to attain sexual cooperation

The fact that real life rape relies on physical contact poses another problem for virtual rape. In elaborating on the differences among the three categories of sexual harassment, Barak (2005) explained that online sexual coercion does, indeed, require the aggressor to use some kind of pressure. “The use of physical force is impossible online . . .” (Barak, 2005, p. 80), but noted that online victims may still perceive online threats as real and harmful. In contrast, many scholars maintain that physical harm can be brought into play in cyberspace (Reid, 1995; MacKinnon, 1997b; Stone, 1992; Powers, 2003; Barak, 2005; Wall, 2007).

Stone (1991), in giving an example, said:

A whack on the head in the ‘real’ world can kill you, whereas a whack in one of the virtual worlds will not (although a legal issue currently being debated by futurist attorneys is what liability the whacker has if the fright caused by a virtual whack gives the whackee a “real” heart attack)” (p. 84).

MacKinnon (1997b) noted that most definitions of real life constructions of rape (including legal) “tend to include elements of physical force, fear, and unwillingness” (p. 12).

Williams (2000) said, “The acts of harassment and even rape have arguably been reengineered from their ‘physical’ manifestations into derisory and harmful textual performances that are present within online community interaction” (p. 97).

Because there are no real people and no real physical feelings such as touch or pain in cyberspace¹⁰, inhabitants of virtual communities must use what knowledge they have of interpersonal interaction, personal space, and their senses to gauge the meanings of interactions in text-based and in visual virtual environments. This is supported by some scholars who believe that harm done to an avatar extends to the controller of that avatar; that the avatar, or virtual representation, functions as an extension of the self and is therefore vulnerable to the psychological harm that can potentially result from virtual rape.

MacKinnon (1997b) said, “If rape is to be given its due in virtual reality, then it cannot be constructed as an assault against mere virtual representations,” that it “must move from the physical to the mental . . . from the realm of virtual reality bodies . . . to the realm of the emotional and psychological self” (p. 13). As proposed by Wall (2001), acts of cyber violence involve “bringing psychological harm to or inciting physical harm against others, thereby breaching laws pertaining to the protection of the person” (Jaishankar, 2008, p. 287).

Reid (1995) touched on this problem by pointing out that participants in virtual reality environments tend to treat virtual reality and the depictions therein as if they were real, actual, and accurate. This denotes that any consequences suffered by a virtual character due to an incident, whether good or bad, can indeed carry over into reality and affect the real person. Similarly, Powers (2003) posited, “Characters are in fact conduits of the meaning and illocutionary force of the controllers’ acts” (p. 195) and determined through speech-act theory that “the character-controller identification allows harm to a character become a

¹⁰ The very first virtual environments were significantly limited to visual feedback in the form of text-based environments, but more recently aurally and visually (textual and graphic) stimulating virtual environments have become the norm. However, new research and technologies are being developed that can more easily stimulate (and simulate) the five traditional senses (sound, sight, smell, taste, and touch) to create a more immersive virtual experience.

wrong to a controller” (p. 196). That is to say that when real people create characters with which they spend a lot of time and energy, they begin to attribute feelings and incidents of the character to themselves rather than to the character. They become one entity instead of two separate ones. In his conclusion, Powers (2003) said, “the closeness of virtual and real communities is expressed in the parallel between the irreplaceability of characters and the mortality of the real people” (p. 198). Stone (1992) cautioned that behind every avatar or virtual persona is a real person, body, and mind. This suggests that virtual personas and their real life operators should not be considered separately, but rather as a part of each other. Thus, new legal and altered theoretical perspectives are needed in the examination of virtual rape.

Rape vs. Virtual Rape

From the previous information about sexual assault and virtual rape, some key similarities and differences between the two can be identified. To illustrate these similarities differences, the following (non-exhaustive) chart has been constructed:

Table 1

	Rape	Virtual Rape
Why it happens:	Power, Control	Power, Control
How it happens:	<ul style="list-style-type: none"> • Not random, usually • By physical force (unwanted penetration, abuse, touching, etc.) • Can be result of stalking, sexual harassment, date rape, etc. 	<ul style="list-style-type: none"> • Non random • Random (more often) • By psychological force (threatening messages/emails, viruses, hacking, spam, bribes, seductions, etc.) • Can be result of stalking, sexual harassment, naivety, in-experience
Who it happens to:	Naïve or trusting	Naïve or trusting, in-experienced (newbies)

In addition to the differences outlined above, there are additional key differences between real rape and virtual rape. In real rape, the victim may be able to escape or run away, call for help, or file a police report. In cyberspace, victims of virtual rape may not be able to escape (one avatar can typically do what another can) or may not know how to escape or be able to receive physical help from others who are present (after all, cyberspace lacks physicality). There may be insufficient or no resources for reporting incidents to game managers or creators (even if a report is filed, it may not be investigated and the offender may not be punished). As stated in Chapter 1, common solutions offered are to leave the virtual environment or physically turn off the computer. Both of these solutions afford the offender just the power s/he is looking for. Accountability also fuels this power.

Real rape tends to occur in private places because the offender does not want to be seen or caught (date rape drugs further prevent even the victim from remember the offender). However, virtual rape can occur publicly or privately because there are little to no consequences if the offender is seen or caught. Diana Allendale's (2007) experience, as described earlier, occurred on a nude beach where any other avatar could have been. Other posts on the topic have indicated that virtual rapes have happened in other public places in Second Life like Help Island.

Cases of Virtual Rape

In order to demonstrate how acts of virtual rape affect the victims in both cyberspace and reality, and contextualize the concepts outlined above, three cases of virtual rape will now be examined:

The “Bungle Affair”

The first extensively printed account of virtual rape was officially recorded by Julian Dibbell in an article written for *The Village Voice* in 1993. Dibbell’s account of the “Bungle Affair” was later expanded into a book in which he disclosed the most intimate details of the virtual rape as well as the victims’ and the online community’s reactions to the attacker and incident. Dibbell’s publications on the Bungle Affair have been referenced by professionals and scholars alike and are considered an important foundation of the topic of virtual rape. The facts of what happened in LambdaMOO must be remembered as occurring in cyberspace, as the majority of the details are not necessarily consistent with the forces of real life.

The Bungle Affair occurred in place in cyberspace called LambdaMOO, a type of multi-user dimension¹¹ (MUD) in which users could create rooms and objects with which to interact (MOO is short for object-oriented MUD). It could be found only by a Web address and was characterized as a mansion with hundreds of interconnected rooms. The perpetrator was called Mr. Bungle, an avatar controlled by a New York University student described as “a fat, oleaginous, Bisquick-faced clown dressed in cum-stained harlequin garb and girdled with a mistletoe-and-hemlock belt whose buckle bore the quaint inscription ‘KISS ME UNDER THIS, BITCH!’” (Dibbell, 1998, p. 13).

Dibbell (1998) recalled that the virtual rape happened on a Monday in March, 1993, in the living room of the LambdaMOO where many other avatars were gathered. Mr. Bungle, unprovoked, entered the living room at around 10 P.M. (Pacific Standard Time) and,

¹¹ MUDs are virtual communities that allow many people to log on simultaneously from geographically scattered locations and communicate in real-time with one another via typed text. Through detailed descriptions, they create vivid illusions of physical space (Kendall, 1993; Dibbell, 1998).

by manipulating a voodoo doll¹², forced legba (gender indeterminate), controlled by a woman from Seattle, WA, into sexually servicing him. legba invoked curses on him that literally ejected him from the living room. From there, he retired to unknown whereabouts in the mansion from where he continued to use his voodoo doll to attack, this time on multiple avatars¹³: Starsinger, a female character controlled by a woman in Haverford, PA, legba, Bakunin (gender unknown), and Juniper (a squirrel). He forced legba to consume his/her own pubic hair, Starsinger to violate herself with a steak knife, and for all of them to perform violent sexual acts with each other. Finally, the ordeal was ended when Iggy, a trusted character, used a magic gun that enclosed Mr. Bungle in a cage that prevented both doll and avatar from causing further chaos¹⁴.

While Dibbell (1998) uses rape sparingly as a term to describe the March 1993 incident, the majority of LambdaMOO members invariably interpreted it as such. After much deliberation and with lauded backing from a number of LambdaMOOers, legba called for Mr. Bungle to be toaded¹⁵.

Dibbell mentions in his book that Mr. Bungle and his victims were mostly university students.

¹² In LambdaMOO, a “voodoo doll” is a “subprogram that served the . . . purpose of attributing actions to other characters that their users did not actually write” (Dibbell, 1998, p. 15).

¹³ The names of the avatars were changed from legba, Starsinger, Bakunin, Juniper, and Zippy in Dibbell’s original 1993 Village Voice publication to exu, Moondreamer, Kropotkin, Snugberry, and Iggy, respectively, in his 1998 book *My Tiny Life*.

¹⁴ Eventually another avatar, Xander, freed Mr. Bungle from the cage after heeding his cries for help. Xander only learned of Mr. Bungle’s exploitation of his fellow LambdaMOOers after he freed the villain.

¹⁵ Toading refers to a wizard’s action of permanently changing the avatar’s name and description (traditionally to the appearance of a toad) and placing that character in a public space of the virtual community. It has also been used to refer to the deletion or permanent exile of a player’s character in a virtual community.

Jake Baker

The second case was that of Abraham Jacob Alkhabaz, a.k.a. Jake Baker (U.S. v. Alkhabaz, 1997), a University of Michigan undergraduate student who, in the mid-1990s, contributed a number of fictional rape, torture, and snuff stories to an interactive USENET news group called “alt.sex.stories.” One story, in particular, published by Baker on the newsgroup on January 9, 1995, called the “Jane Doe¹⁶ Story,” was named after an actual female classmate. The story raised alarm at the University of Michigan after a distressed citizen reported the post to the university.

Shortly thereafter, Baker gave permission to University of Michigan investigators to search his dormitory room, personal papers, and email account where another story about “Jane Doe” was found along with her accurate current address. Additionally, a number of correspondences were found between Baker and another man detailing their

. . . plans of abduction, bondage, torture, humiliation, mutilation, rape, sodomy, murder, and necrophilia. Most ominously, these messages cumulated in a conspiracy between the two men to realize their aberrant e-mail discussions and exchanges by implementing an actual abduction, rape, and murder of a female person. (U.S. v. Alkhabaz, 1997, at 1498)

Baker was charged by the United States district court on five counts of transmitting threatening communications. It was recommended by University of Michigan personnel for Jane Doe to receive psychological counseling.

Brussels Investigation Into Second Life

In 2007, articles in two Belgian newspapers, *De Morgen* and *Het Laatste Nieuws*, pointed to an investigation of Brussels police into an alleged virtual rape of a Belgian Second

¹⁶ The true identity of “Jane Doe” was known to the district court and appellate forum but was changed to “spare this young woman any additional and unnecessary fear, emotional trauma, or embarrassment” (US v. Alkhabaz, at 1498, footnote 3).

Life user (Lynn, 2007). Second Life is a real life massive multiplayer online game (MMOG) created by Linden Lab in which users create avatars through which they can literally live a second life, even if virtual.

The two stories were mused over by a small number of American writers interested in the topic. Both the *De Morgen* and the *Het Laatste Nieuws* stories were translated by reader James Wallmann and posted on www.volokh.com after the author of an article called for translations¹⁷:

Federal Computer Crime Unit Patrols in Second Life

The Brussels Public Prosecutor's Office has asked investigators of the Federal Computer Crime Unit to patrol in Second Life. In the virtual world of the computer game¹⁸ a personality was recently "raped." Following the virtual rape the Brussels police opened a file. "It is the intent to determine whether punishable acts have been committed," according to the federal police. The Public Prosecutor's Office was also alarmed. At the vice section, acting officer Verlinden opened an informational investigation into the details. (Volokh, 2007)

Since the Belgian newspapers published the stories in April 2007, no further articles on the alleged cyber-rape have been disseminated, as far as Web searches have revealed.

From the examination presented here, it appears that acts of virtual rape have not yet resulted in legal consequences for perpetrators in the United States, which raises significant questions about the need for legal direction in this area.

Virtual Rape, Cyber Violence, and the Law

It is important to recognize that any cases of actual virtual rape have eluded legal ramifications as of yet, at least in the United States. Whether this is due to the nonexistence of statutes specifically regulating cyber violence or virtual rape, or the failure to amend

¹⁷ Both stories were very similar, with the *Het Laatste Nieuws* article getting its story from *De Morgen*.

¹⁸ Wallmann added that in the original article, the suffix "-etje" was attached to the end of the Dutch word for "game." This diminutive suffix suggests that the game is something trivial or for kids.

existing common law to include elements of cyber violence comes into consideration. Thus, the following questions will be examined:

RQ1: Does accountability in Second Life lie on the shoulders of Linden Lab or does it fall into the lap of the users? Answering this question will advise on the position of Linden Lab and its liabilities and responsibilities.

RQ2: Is virtual rape protected by the rights afforded under the First Amendment? Determining if virtual rape is or is not protected by the First Amendment is the first step in being able to apply criminal law to cases in which it occurs. If it is shown that virtual rape is not protected speech, criminal law may be applicable. However, if virtual rape is protected expression, civil law may apply.

RQ3: What real laws or statutes exist, or can be amended, to address virtual rape? Fitting virtual rape into the correct category of offenses is important in determining the extent to which it could actually be regulated under criminal law, assuming that First Amendment protections do not apply.

Answering these research questions will require analyses of several statutes and review of U.S. common law. It will also require an analysis of the First Amendment of the U.S. Constitution as well as a close examination of the Second Life TOS agreement and Community Standards as provided by Linden Lab and Second Life. Chapter 3 will detail the research methods used in this study to answer the posed research questions.

CHAPTER 3: METHODS AND PROCEDURES

To this point, the analysis has focused on the fundamentals of the problem of virtual rape and the definitions, perspectives, concepts, and philosophies that help explain it. It has also provided an escalating lineation of a number of types of cyber violence with virtual rape being one of the most intense and distressing. Additionally, it has brought summaries of three ordeals concerning virtual rape to the forefront to act as examples.

The purpose of this chapter is to detail the methods used to conduct legal research and analysis. The first section of this chapter summarizes legal research and outlines how cases are found. The second section outlines the evaluation of the Second Life TOS agreement, Community Standards, and other provided documents.

Legal Research and Analysis

Legal research utilizes two types of research as main legal sources. Primary authority, as Putnam (2008) defined it, is “authority that is composed of the law (for example, constitution, statutes, and court opinions)” (p. 254). Case law falls easily into this category. Putnam (2008) described secondary authority as “any source of law a court may rely on that is not the law (for example, a legal treatise, restatement of the law, or legal encyclopedia)” (p. 254), and described it as “not the law” per se, but “persuasive authority” (p. 33).

To obtain primary and secondary sources used to apply case law and statutes concerning situations of real life rape to those of virtual rape, the online legal databases LexisNexis and Westlaw Campus Research were used. Using the Westlaw database, combinations of the terms “sexual,” “assault,” “rape,” “cyberspace,” “virtual reality,” “virtual community,” “harassment,” and “sexual harassment” were entered in the “key

search.” Similarly, LexisNexis was searched for identical terms. This revealed a number of primary and secondary sources, not all of which will were useful for the analysis.

A very useful feature of LexisNexis is *Shepard's Citations*. By entering a case citation into the search field, the history of that case as well as citing decisions, annotated statutes, and law reviews and periodicals were revealed making this an invaluable research tool. The number and strength of the cases and decisions returned by *Shepard's Citations* can indicate their binding legal authority and how often the Court has relied on particular precedents in later decisions.

Identifying the rule behind a court decision is often a difficult task. Similarly, applying case law to an issue or legal question can be equally complicated. The purpose of legal research and analysis is to identify appropriate statutory and case law that interprets how the law applies (Putman, 2008); that it is “an exploration of how and why a specific law does or does not apply (p. 252). Case law analysis, more specifically, is the process of analytically determining how a court opinion may affect the result of another case being decided later (Putnam, 2008).

Case law is important for lawyers and judges. It is a major source of law in the US legal system and is a heavily used resource in analogical reasoning (Sunstein, 1993). According to Sunstein (1993), “analogical reasoning maintains its status as an exceedingly prominent means by which both lawyers and nonlawyers think about legal and moral questions” (p. 742). Nemeth and Haywood (2005) said, “Case law will always remain central to the resolution of legal research problems” (p. 235). Sunstein (1993) held, “The common law – the product and the most celebrated locus of analogical reasoning – has often been misunderstood as a result of social custom rather than an opposition of judicial will” (p.

754). Putnam (2008) said, “The doctrines of precedent and *stare decisis* govern and guide the application of case law and thereby provide uniformity and consistency in the common law system” (p. 164). These scholars indicate the importance and weight of case law in the United States, as it is used to provide analogical interpretation for undefined and undecided claims.

Precedent is defined by Putnam (2008) as, “an earlier court decision on an issue that governs or guides a subsequent court in its determination of an identical or similar issue based on identical or similar key facts” (p. 164). There are two types of precedent courts can use in deciding a current case. One type is the mandatory precedent. The mandatory precedent is a decision passed down from a higher court that must be followed by lower courts in the jurisdiction (p. 165). This is required by the *stare decisis*, a doctrine stating “similar cases must be decided the same way—that cases that are precedent must be followed” (p. 165). The second type of precedent is the persuasive precedent. The persuasive precedent is a previous decision that a court can look to for guidance when determining the outcome of a case. This type of precedent is not bound by *stare decisis* and, therefore, no court is required to follow it.

Second Life Terms Evaluation of Self-Regulation

In addition to conducting a legal analysis of statues, case law, and statutory provision to determine the plausibility of regulation of virtual rape in virtual communities, this thesis will also consider the state of industry self-regulation specifically related to accountability within Second Life. Since the game is modeled after real life, it will give good insight into the dilemmas of accountability and responsibility currently faced by many MMOG companies. Linden Lab’s TOS and Community Standards will be thoroughly examined for

principles related to corporate and player self-regulation. Contradictions, problems, inconsistencies, and how liability/responsibility is dealt with in Second Life will be examined and evaluated.

CHAPTER 4: ANALYSIS

Examining the TOS agreement and Community Standards as provided by Linden Lab and Second Life to determine the limitations of personal accountability and corporate accountability is the first objective of Chapter 4. The second objective is to determine whether virtual rape is protected by the First Amendment and to identify the arguments behind each position. The third is to identify what statutes could regulate or be amended to include the behavior of virtual rape in order to make it punishable by law.

Second Life Terms of Service Review

Reviewing the Second Life TOS agreement and supplemental documents furnished to users by Linden Lab will help the researcher get an idea of how the corporate side of Second Life addresses accountability. Does it take some responsibility or does it leave all the responsibility of accountability in the hands of the user? When one user is affected by another user's irresponsibility or aggression, does Linden Lab attempt to resolve the problem and how? Does Linden Lab provide tools for players of Second Life to use to maintain their safety in the virtual community and environment it has created?

Understanding how Linden Lab has allocated responsibility and accountability in Second Life may indicate the current state of accountability.

Terms of Service

The Linden Lab TOS agreement requires Second Life users to accept a number of terms before being able to use the service they provide. "Service" as described by the TOS agreement is:

"Second Life" is the multi-user online service offered by Linden Lab, including the software provided to you by Linden Lab (collectively, the "Linden Software") and the online environments that support the service, including without limitation: the server

computation, software access, messaging and protocols that simulate the Second Life environment (the "Servers"), the software that is provided by Linden Lab and installed on the local computer or other device you use to access the Servers and thereby view or otherwise access the Second Life environment (the "Viewer"), application program interfaces provided by Linden Lab to you for use with Second Life (the "APIs"), and access to the websites and services available from the domain and subdomains of <http://secondlife.com> (the "Websites"). The Servers, Viewer, APIs, Websites and any other Linden Software collectively constitute the "Service" as used in this Agreement. (Subsection 1.1)

The provisions players agree to in the TOS cover a range of topics including the content and services of Second Life, account registration and requirements, license terms and other intellectual property terms, conduct by users of Second Life, releases, disclaimers of warranty, limitation of liability and indemnification, player privacy policy, dispute resolution, and general provisions.

The following sections look at specific items within the Second Life TOS that Linden Lab uses to absolve itself of any liability and accountability within the confines of its multi-user environment (which includes all software and websites), even if the problems that arise are due to content and conduct experienced while using the service.

Section 1: The Services and Content of Second Life

Subsection 1.2 of the TOS agreement begins by stating that Linden Lab is a service provider and therefore does not control various aspects of the service. It clarifies by explaining that it “does not regulate the content of communications between users or users’ interactions with the Service” and that because of this it has “limited control, if any, over the quality, safety, morality, legality, truthfulness, or accuracy of various aspects of the Service” (Subsection 1.2). Subsection 1.3 adds that Linden Lab does not prescreen user-created

content¹⁹. This can become an issue for users when dealing with harassment put forth by an object. Absolving itself from the responsibility of prescreening user-created content takes the liability of Linden Lab out of the equation. Users who are harassed in by in-world object may have the ability to report those objects, but they do not have the ability to do anything about the objects themselves except walking or transporting away. While the sheer volume of prescreening user-created content would be enormous for Linden Lab, it could be a first step to improved regulation in Second Life.

Section 2: Account Registrations and Requirements

Subsection 2.2 of the TOS agreement explains that people under the age of 13 are forbidden access to Second Life, users 13-17 are only allowed access to the Teen Area, and users 18 and older are prohibited from entering to the Teen Area. While Linden Lab threatens the possible termination of any or all accounts as a consequence for those who are found where they are not supposed to be, it also reminds the user that it cannot control whether teens or adults acquire access to an area other than where they should be. Although Linden Lab makes clear the rules the age restrictions in certain area (like the teen grid), it renders itself as not responsible for the location of users who are not in the correct area. This becomes a problem with ageplay (previously mentioned in Chapter 2) and other types of mature content. Linden Lab is neither responsible for children exposed to that mature content, nor responsible for exposing adults to children in mature settings.

Additionally, Linden Lab absolves itself from liability for any inappropriate, objectionable, or offensive content or access to content provided by other users or non-

¹⁹ Graphics, sound effects, music video, audio, computer programs, animation, text and other creative output are collectively defined by the TOS as "Content."

employees of Linden Lab. The context indicates that this includes content found both on the regular service for adults and the Teen Area for teens. So, for example, if another player (adult or teen) supplies adult or mature content to another player on the teen grid, Linden Lab is not responsible for monitoring their environment.

Subsection 2.3, states that Second Life account names may not be misleading, offensive, or infringing, and says that each user is responsible “for all activities conducted through your Account or under your Account Name” (Subsection 2.3). The fact that teens are required to obtain permission from their parents before registering to use Second Life not only makes teens liable for the actions and activities performed by their (and other) avatars, but also makes parents of teens liable for those same actions—even if the teen never received permission in the first place. While it may be the responsibility of parents to know what their kids are creating for their online lives, placing accountability on possibly unknowing third parties (while in this case necessary) is irresponsible of Linden Lab.

Section 4: Conduct by Users of Second Life

This section of the Second Life TOS agreement contends all users must follow a prescribed set of behavioral guideless provided by Linden Lab. However, in addition to the code of conduct, Subsection 4.1 reminds readers that Linden Lab also expects that users will refrain from a number of activities and behaviors (see Section 4.1 in Appendix A). To enforce these requirements, Linden Lab once again threatens “immediate or permanent suspension or cancellation” (Subsection 4.1) of one or all accounts of users who violate them.

The list of activities and behaviors the TOS supplies that must be refrained from is fairly inclusive, but the threat of immediate or permanent suspension seems like a light sentence for some of the activities and behaviors pointed out. And while the threats that

Linden Lab makes in response to engaging in these behaviors might seem grave to some users, two things must be remembered: 1) that they are just threats and not promises and 2) the threats *may only be enforced* if the behavior is reported.

Section 5: Releases, Disclaimers of Warranty, Limitation of Liability, and Indemnification

Section 5 is probably the most telling of Linden Lab’s position on corporate and personal accountability. Subsection 5.1 begins by explaining that any user of Second Life cannot hold Linden Lab accountable for actions of other users within the game, but reserves that it has the right—but is not obligated—to resolve disputes between users.

Subsection 5.5 holds that Linden Lab “cannot be held responsible or liable for anything that occurs or results from accessing or subscribing to the Service.” This is a catchall for Linden Lab and indicates that while they hold the power to resolve some disputes among or between Second Life users, they are clearly distancing themselves from any liability—including personal injury or emotional distress—that could result from in-game cyber violence.

While Linden Lab has made it clear at this point in the TOS that it will not be held liable for any in-game disturbance of any kind, it goes one step further to politely demand that upon its request, the user must *defend* Linden Lab from claims (Subsection 5.6).

It could be argued that Linden Lab only provides a forum in which residents can lead a second life, a way of life that they may not be able to lead in real life. It could also be argued that users would find another forum if Second Life was not available for them to use. So the question here becomes who is responsible for the cyber violence that occurs in Second Life? Linden Lab, by contract, is obviously not liable for anything that happens to any user

by the hands of another user and is not obligated to resolve any issue it does not want to resolve, which puts the majority of users at fault for their actions. But while all accountability of actions is now in the lap of the users, there is no sure system by which to make accountability matter; the punishments laid out are not carved in stone and Linden Lab only uses them when it deems it necessary.

Community Standards

Linden Lab provides the Second Life community with a set of principles, a collection of behavioral guidelines that every resident or user of Second Life is expected to abide by while they are using the service. Users of the adult-accessible version Second Life are required to follow what is known as the “Big Six.” Those users who access the teen version of Second Life are expected to follow a few more guidelines, known as the “Big Ten.” While there are two sets of guidelines that two sets of users must look to, this analysis will focus solely on the Big Six. The goal of the Second Life Community Standards is to “treat each other with respect and without harassment, adhere to local standards as indicated by simulator ratings, and refrain from any hate activity which slurs a real-world individual or real-world community” (Community Standards, 2009, paragraph 3). This goal is communicated through the Big Six which includes brief definitions of 1) intolerance, 2) harassment, 3) assault, 4) disclosure, 5) adult regions, groups, and listings, and 6) disturbing the peace.

The final sections of the Community Standards quickly outline Linden Lab policies and discuss the negative consequences associated with violation of the Big Six. In the subsection called “Warning, Suspension, Banishment,” Linden Lab recognizes that new users must familiarize themselves with a new environment and reminds readers of this. This also

means new users will have to get used to a lack of formal governance, which can itself, in some cases, be the instigator to breaking the rules of the Community Standards. The subsection also communicates that Linden Lab and Second Life loosely operate on the ideal of “three strikes.” If a user is in violation of the Community Standards, s/he will initially be warned. Further offenses warrant temporary suspension and “eventual Banishment from Second Life” (Community Standards, paragraph 14). While the document does well to mention the consequences of violation, it does not fully explain them. For example, how many offenses must be made for a user to deserve suspension and/or banishment? If a resident is suspended, what is the length of suspension and what determines the length of suspension?

It is clear that the Community Standards are a very broad set of ideals with a broad set of consequences. This may be because Linden Lab promises to evaluate each complaint and violation of the Community Standards sent to customer service (*Online Harassment*, 2009; see Appendix B). Though Linden Lab reserves the right to look into the grievances it wants to, this right also gives it the time and resources to look into only the most offensive complaints submitted. In turn, this would help to create a more secure Second Life environment by being able to amend the Community Standards and TOS, assuming that this is, indeed, what Linden Lab does when it evaluates abuse reports. Unfortunately, no evidence points to the fact that is what Linden Lab does.

Second Life Tools for Reporting

Although the Second Life Community Standards and the TOS agreement cover most of the rules, some residents may still have questions on how to report online harassment. For this, Linden Lab has provided a set of frequently asked questions (FAQs) titled “How to

Handle Online Harassment” *Online Harassment*, 2009) that outlines what residents can do to report violations themselves or others and what they can do to deal with harassment at the moment it occurs.

The main tool for reporting a violation is an abuse report. Each player has access to the abuse report at any time. When the abuse report option is accessed from the players control console (the screen the player always sees during game-play), the report automatically takes a snapshot, or photo, of the scene in front of the player. This feature is especially useful if the harassment is happening as the report is accessed. Players cannot only report other players and incidents, but also offensive objects. If an object is the source of the offense, the abuse report automatically logs the creator and location information of the object when prompted. This feature can be useful when a player is offended by objects in regions of Second Life that are not designated as mature²⁰, especially since content is not prescreened. A secondary method to abuse reporting, Residents who experience less than ideal circumstances when using the Second Life service can also find assistance on Help Island, a place within the world of Second Life, where Linden Lab employees are located who can offer advice and assistance with in-game play.

In addition to the residents’ ability to immediately report harassment to Second Life customer service, they can also take steps to deal with it the moment it begins. If one player is verbally harassing another through voice chat, the player being harassed can instantly mute the chat. If a resident is in an area where a ‘griefing’ attack is taking place, Linden Lab suggests remaining calm and trying not to panic *Online Harassment*, 2009). If a player

²⁰ An “adult designation applies to Second Life® Regions that host conduct or display content that is sexually explicit or intensely violent, or depicts illicit drug use” (*Maturity Ratings*, 2009).

continually harasses another player on his or her own land, the harassed player has the ability to freeze, ban, or eject the harassing player from the land. This limits access to the harasser and gives the victimized resident a safe zone²¹. Removing an abuser from a resident's friend list can prevent the abuser from following the victim and knowing where he/she has gone.

While all of these options for abuse are legitimate in their own right, a distinct line remains that cannot be crossed by the victim. This line is made clear by the Community Standards and TOS agreement that have been put in place to make Second Life a better place and to make the victim's experience the best it can be. The reporting options are escape methods are not cut-and-dry and offer little solace to players who are victim to cyber violence. Even though Linden Lab playfully shows off the effectiveness of the mute feature by the comment in the online harassment document, "Click! Problem solved" *Online Harassment*, 2009), it is more than evident in the real world that covering one's ears or moving to a different place does not always alleviate the torment of a harasser.

Linden Lab has undoubtedly placed the majority of the responsibility of taking care of cyber violence in the user's hands. As real people have to respond to real violence in the real world with a real police report for the police to then act on, Linden Lab and Second Life are not obligated to respond to the reports sent to them by users even though they provide tools to report violence. They do not have to ensure the safety of their users if they do not see it as necessary (on a case-by-case basis), as dictated by the TOS agreement. There is no measure of how many abuse reports are submitted daily and there is no measure of how

²¹ Note that this only works when the harassed resident owns a piece of land in Second Life. This function is not available on public land.

many abuse reports are considered or investigated²². Additionally, there is no concrete or permanent scale of punishment for offenders. Linden Lab reserves the right to *maybe* enforce the rules it has set if it feels the need to do so. Without a clear-cut set of punishments, how can clear-cut rules be effectively enforced?

Virtual Rape and the First Amendment

The heart of the argument of virtual rape and its enforceability really lies in the First Amendment and whether or not, in Second Life and other virtual communities in which avatars are the actors, virtual rape is considered speech or an act. In order to establish the illegality of virtual rape under the statutes of the state of California, it must first be determined if the First Amendment protects virtual rape.

The First Amendment to the U.S. Constitution affirms, “Congress shall make no law . . . abridging freedom of speech . . .” The purpose of this Amendment is to protect speech from government censorship. If virtual rape is protected speech under the First Amendment, the government cannot create or amend statutes to include the actions or behavior that it elicits; if virtual rape is not protected speech, then statutes could be created or amended to regulate this type of cyber violence. So is virtual rape protected speech or unprotected action?

An Argument of Free Speech

Those who oppose regulation of this type of Internet violence could argue that virtual rape is, indeed, a speech act rather than performance and is therefore protected under the First Amendment. Because Second Life avatars are virtual representations of the controllers

²² Guest (2007, p. 140) reported, “By the end of 2006, Linden Lab was receiving close to 2000 abuse reports a day.”

behind them, the performances of the avatars are also representations, no matter the emotional consequence of the performance. In *Ashcroft v. Free Speech Coalition* (2002), the Supreme Court agreed with the Ninth Circuit that specific provisions of the Child Pornography Protection Act of 1996 were too broad. The Supreme Court concurred that the *idea* of child pornography cannot be muted, stating “depictions of sexually explicit conduct that are ‘advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct’ [Child Pornography Prevention Act, 1996] is...substantially overbroad and in violation of the First Amendment.”

Another argument of this position is that because the Internet is considered a generic environment comprised of modes of communication (Holmes, 2005), all communication occurring within those modes is protected under the First Amendment. This brings the argument back to idea that visuals should be considered representations rather than actual performances, which, again, are protected. For example, in *R.A.V. v. City of St. Paul, Minn.* (1992), it was found that burning a cross on a black family’s lawn did not constitute “fighting words” and was therefore not punishable under the St. Paul, MN Bias-Motivated Crime Ordinance. Similarly, in *Brandenburg v. Ohio* (1969), the U.S. Supreme Court reversed the decision that Brandenburg, who had himself filmed supporting Nazi ideals (but not acting on them), could be convicted of violating the Ohio Criminal Syndicalism Act of 1919 for “advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action” (at 449). In *R.A.V.*, the symbol of the burning cross on a black family’s lawn was not necessarily a threat as much as it was a demonstration of

ideals, as was the case in *Brandenburg*. These two cases show that symbols or visuals are generally not held to the same standards as actions.

A third argument is that everything in Second Life from the houses, to Linden Dollars, to the residents is simply comprised of pixels of information; nothing is corporeal. The only way a real person can interact with any object in Second Life is to do so through an avatar. Because there is no real interaction or physical touch, how could virtual rape be construed as anything other than a representation or communication? Reiterating the Jake Baker case (*U.S. v. Alkhabaz*, 1997), while the emails between Baker and his friend were morbid and wrote of what they wanted to do, and while Baker's story detailed the violent rape and murder of a girl who held the same name as his schoolmate, it was found that neither of these communications constituted a threat of any kind, nor invoked any kind of real physical damage.

These three arguments provide a strong case for the protection of virtual rape as speech under the First Amendment. The next section outlines arguments from the point of view of advocates of the illegality of virtual rape.

An Argument of Illegality

A first argument for the illegality of virtual rape is that because the intentions of others in cyberspace and in virtual communities can be as significant as in real life, the negative intentions of virtual rape are significant to players who are so attached to their avatars. As mentioned earlier, Powers (2003) believed speech and actions carried out in computer programs could be just as significant and impacting as those carried out in real life and that performances and utterances could be distinguished from each other (p. 193). As Brenner (2008) concluded, hitting someone is different than calling them a name. The

intentions of others are important because some users become intensely attached and involved with their virtual characters. Linden Lab may not have written a code of conduct or created a set of consequences for the actions of players if the ill intentions of others were not important. These ill intentions could even potentially be perceived as threats, depending on the victim receiving the message.

A second argument for illegality of virtual rape is that violence begets violence (Brenner, 2008); that because virtual rape is a representation of real rape, it could persuade or push people to commit those acts in real life. But this is a proposed physical harm. No research to date has absolutely proven that seeing or hearing violence causes a person act out the same violence in real life. However, if a virtual rape goes unpunished, there is always the chance that some real individuals may assume there are also no real life consequences. Even so, the courts have determined “that speech does not lose its First Amendment protection merely because it has ‘a tendency to lead to violence’” (Hess v. Indiana, 1973).

A third and final line of reasoning for the illegality of virtual rape is that while non-consensual virtual rape itself does not necessarily inflict physical harm on a real person, it can and does inflict emotional harm. MacKinnon’s (1997b) position is that the intention of virtual rape is not to harm the avatar, but to harm the controller. Because players consider their avatars as extensions of themselves (MacKinnon, 1997b), the suffered physical harm of the avatar is the psychological and emotional harm of the operator or controller. However, as Jaishankar (2008) was previously noted as saying in Chapter 2, psychological and emotional harm brought on by cyber violence breach the laws concerning the actual physical person. In *Twyman v. Twyman* (1993), an emotional distress claim was granted to a wife who had been raped prior to marriage and filed against her husband who demanded that she engage in

sexual acts involving bondage activities. The decision was granted based on four elements: 1) the aggressor's actions were reckless and intentional, 2) the conduct was extreme and outrageous, 3) there was a connection between the aggressor's actions and the victim's distress, and 4) the emotional distress was severe (at 630). In *Womack v. Eldridge* (1974), Womack was granted judgment for emotional distress, unaccompanied by physical injury, on the same four elements in a claim against Eldridge, who gained unauthorized access to Womack's home and took a picture of him for use in a child molestation case. Although these cases occurred in real life and were mediated by the US judicial system, the four elements used to determine the outcomes can most definitely be applied to virtual rape.

From these two sides of the coin we can see that arguments can be made both ways for the regulation or non-regulation of virtual rape. While the arguments pertaining to protection of virtual rape do make valid points, one specific argument pertaining to the regulation of virtual rape is conclusive: that there is a real emotional harm sustained by the real person behind the avatar. Based on this observation, this paper will now look at which existing laws could be used or amended to regulate virtual rape.

Regulation of Virtual Rape

Traditionally in the United States court system, cases seeking compensation for emotional distress and personal injury are difficult to win. Infliction of emotional harm and emotional distress (e.g. harassment) are considered the least damaging in the eyes of the law while physical injury (e.g. murder) is considered most damaging (Brenner, 2008; Golden, 2004). In Chapter 2 it was mentioned that virtual rape is likened to stalking, harassment, or a variation thereof and is therefore lumped in with laws regulating those actions. Brenner (2008) verified this and included that because virtual rape cannot inflict physical harm but

can only inflict emotional harm “It might...be appropriate to approach virtual rape as a variation of harassment or stalking . . . [H]arassment and stalking statutes target affective harm; they also require that the perpetrator have engaged in a course of conduct that is inferentially and objectively likely to cause emotional injury” (p. 31 at 78).

But there is one issue that needs to be clarified before exploring how virtual rape can be regulated through the law: consensual vs. non-consensual virtual rape. In Second Life, both types of virtual rape exist and both have occurred. Although there have been situations of non-consensual virtual rape, the occurrence of consensual rape is significantly more common. This is due to a number of areas with adult designations on the 18+ grid in which, Second Life residents can use Linden Dollars, the currency in Second Life, to purchase an array of sexual toys, poses, and services, including consensual rape.

Brenner (2008) primarily analyzed the application of criminal law to consensual virtual rape and admitted that the “phenomenon” complicated the analysis in three ways. First, the definition of real life rape implies forced physical contact of real people (p. 32 at 80). Second, consent in the real world is a defense against rape (p. 32 at 80). Third, since the act of consensual virtual rape is just that, the “victim” should suffer no emotional harm (p.32 at 81). Therefore, if the virtual rape is a consensual part of role-playing (as it usually is in the adult rated areas of Second Life), there would be no forced physical sexual contact, there would be no opposition to the action, and there would presumably be no emotional harm resulting from the action. Ultimately, Brenner (2008) concluded that consensual virtual rape could indeed be made illegal (p. 34 at 85).

However, contrary to Brenner’s (2008) application of criminal law to consensual virtual rape, this analysis will mainly focus on non-consensual virtual rape (from this point

on, virtual rape should be considered non-consensual). Focusing specifically on non-consensual virtual rape may help keep the analysis freer from some of the complications that consensual virtual rape presents. Additionally, because Linden Lab is physically located in the state of California, and because the Second Life TOS (n.d.) indicates that California is the exclusive jurisdiction for settling any and all disputes, this study analyzes the issue of virtual rape as if it had occurred there.

A brief review of California's definitions of rape, stalking, and sexual harassment alongside the original definition of virtual rape will be useful in helping to identify the differences and similarities among them:

1. Rape: "An act of sexual intercourse accomplished with a person not the spouse of the perpetrator." (West's Ann.Cal.Penal Code § 261; see Appendix C).
2. Stalking: "Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison." (West's Ann.Cal.Penal Code § 646.9; see Appendix D)
3. Sexual Harassment: Harassment that includes verbal harassment, physical harassment, visual forms of harassment, and sexual favors. (Cal. Admin. Code tit. 2, § 7287.6; see Appendix E)
4. Virtual Rape: "A sexually-related act of a violent or acutely debasing or profoundly humiliating nature against a character who has not explicitly consented to the interaction. Any act which explicitly references the non-consensual, involuntary exposure, manipulation, or touching of sexual organs of or by a character is considered an act of this nature." (Nancy [#587980] 1994; as referenced in MacKinnon 1997, p. 228)

Under California criminal law, it seems that the definition of rape may be slightly outdated. For example, the perpetrator of the crime of sexual assault can be anyone,

including a spouse or other member of a person's family. Other than this obstacle, California's offensive statute is fairly inclusive, but requires there be real, physical forced or non-consensual sexual intercourse.

California's stalking law is equally inclusive, requiring a stalker to not only "willfully, maliciously, and repeatedly" follow a victim, but also requires the victim to be legitimately threatened and in reasonable fear of his/her own or his/her family's safety.

Harassment, on the other hand, in California's official opinion, is even more inclusive of specific actions than the previous two statutes but also includes (but does not require) a dimension of physical harassment.

The definition of virtual rape, as proposed by character Nancy of LambdaMOO in 1997 and endorsed by some scholars (MacKinnon, 1997a; Williams, 2000), obviously referred to avatars in virtual communities. While the definition was meant to apply specifically to LambdaMOO and lacks much of the technical nuances that would be required of a legal definition, it implies a prior understanding of the definition of real life rape and incorporates some of those characteristics.

If the definition of virtual rape were applied literally to the California statutes, it would fit only under harassment. It would not be considered as falling under rape since it inflicts no real physical harm, whatsoever; regardless of the emotional harm it may or may not inflict on a real person. Another caveat in applying the rape statute is that there is no real sexual intercourse, as is required by the law. Similarly, the stalking statute can also not be applied to cases of virtual rape due to the fact that while there may be malicious harassment involved that is intended to emotionally upset the victim, there is not necessarily relentless pursuit or a credible threat being made.

Alternately, virtual rape *could* be held as sexual harassment under subsections C and E of the California Administrative Code, title 2, section 7287.6. This section states that harassment includes “Visual forms of harassment, e.g., derogatory posters, cartoons, or drawings on a basis enumerated in the Act,” and reminds “the rights of free speech and association shall be accommodated consistently with the intent of this subsection.” In order to apply sexual harassment to virtual rape, the statute would have to be amended to incorporate the necessary terminology.

Ultimately, because virtual rape is currently considered protected speech/expression, justice would have to be pursued by the victim in civil court.

CHAPTER 5: CONCLUSION

This analysis has given insight into a very debated and current topic and shown that even with the somewhat prevalent occurrence of virtual rape, it has yet to be officially considered in a US court of law without extenuating circumstances. A number of scholars have weighed in on the issue, from Julian Dibbell (1993, 1998) on the topic of the first virtual rape to Susan Brenner (2008) on the topic of regulating consensual virtual rape. However this paper has sought to do the following: to 1) provide an insight into where the bulk of accountability falls within the world of Second Life, to 2) determine the strength of virtual rape as held under qualifications of the First Amendment, and to 3) determine what laws or statutes exist that address or can be amended to address virtual rape.

Members of some virtual communities have taken responsibility to try to prevent virtual rape and other types of cyber violence in order to protect the communities they value so greatly, LambdaMOO being the very first to experience and define the problem. While a majority of virtual communities function under the ideals of egalitarianism and libertarianism, there are a fair number that do have a ruling, though invisible, authority. Linden Lab does not operate under either of these models and does present itself as the authority and creator of Second Life, although its TOS agreement mostly serves to shield it from any liability issues rising from offensive or objective content or behavior in Second Life. The TOS has shifted the majority of responsibility and accountability of content and behavior to Second Life residents, though it does retain that it has the power and control to review and investigate any abuse report or complaint made that is worthy of review. Additionally, Linden Lab has written a set of Community Standards for the Second Life community that outlines unacceptable behaviors and iterates the consequences of violating

the rules. The Community Standards follow the TOS agreement closely in that responsibility and accountability are shifted away from Second Life and Linden Lab toward users.

However, neither the TOS nor Community Standards make concrete how, when, and for what reasons behaviors will be enforced. Because of this, the degree of accountability users perceive as being their own is decreased.

However, it may be unrealistic to expect Linden Lab to be able to control all aspects of its virtual space. After all, it is only a virtual meeting place meant to be unrestricted and open, a forum in which people can explore a number of lifestyles activities. Although Linden Lab and Second Life have removed themselves from legal liability and responsibility, shifted the bulk of accountability and responsibility onto their users, and potentially been relaxed in enforcement of Community Standards, they have provided a limited number of tools for residents to use to protect themselves against cyber violence, including virtual rape. This shows that companies running virtual environments have taken (even small) steps to alleviate some of the social problems that arise in virtual communities though most of the responsibility still lies with the user.

In light of the information presented in this analysis, three recommendations for improving perception of accountability and responsibility within Second Life can be made. First, Linden Lab must clearly define the consequences they have set for deviant behavior. Spelling out the types of punishment (account suspension or termination) as well as communicating how those punishments will be enforced, and by whom, can only be a step ahead of the current situation. Second, Linden Lab must publicize significant investigations and findings of reviewed abuse reports in its newsletters and forums. Doing this will ensure the Second Life community that progress is being made and action is being taken to keep

responsible and accountable users safe. This also might spur users to submit more reports if they believe the service is on their side. While the submittal of more reports may bog down the system, Linden Lab can retain the right to review only the abuse reports that it finds significant enough to investigate (as long as it continues to publicize). Third, Linden Lab and Second Life must make their employees and administrators more visible to the Second Life public. Increased awareness of authority will convince users that Second Life is a place for exploration, not deviance. Applying these recommendations will help significantly decrease cyber violence and increase user accountability, responsibility, and overall approval of the service by current residents. Shifting these situations will attract more new users to the service while creating a safer atmosphere for all.

Even though many—if not all—companies shift responsibility and accountability to the users of the virtual environment and may choose not to investigate complaints of abuse or violence in the community, cyber violence, and especially virtual rape, may eventually be enforceable by law.

This analysis evaluated arguments of virtual rape to determine if it fell under First Amendment protections. The arguments consisted of three thoughts: 1) Because avatars are representations of their controllers, so are their performances; 2) Because the Internet itself is generic environment composed of a number of modes of communication, all communication occurring within the environment are protected; and 3) Because all of the images, objects, text, etc. in virtual environments are bits of information and pixels, they cannot be deemed actual objects and are rendered harmless.

For the first argument, it was found in *Ashcroft vs. Free Speech Coalition* (2002) that the mere representation or idea of child pornography, virtual or otherwise, was not

condemnable under the Child Pornography Protection Act of 1996 because some of the Acts provisions were too broad and violated the First Amendment. The second argument, that communication within modes of online communication are protected by the First Amendment, is supported by *R.A.V. v. City of St. Paul, Minn.* (1992), a case in which the court found that burning a cross in a black family's yard was an expression of ideals (and not a threat) and was protected under the First Amendment. It is also supported by *Brandenburg v. Ohio* (1969) in which the court found that openly supporting and advocating certain actions (Nazism, here) is protected speech. The third argument has yet to be supported or opposed judicially in a US court, but will likely surface soon due to the number of people joining virtual communities.

Overall, a strong claim is made for the protection of virtual rape as speech under the First Amendment, but proponents of illegality of non-consensual virtual rape have also presented strong arguments that oppose protection of virtual rape under the First Amendment. However, because no cases specifically involving virtual rape have been brought to the judicial forefront in the United States, it is currently, and will remain, protected free speech until those cases are heard and decided. Currently, no one is accountable in ordeals of virtual rape because it is considered protected expression, but the Supreme Court's recent indecency ruling against Fox Television (*F.C.C. v. Fox Television Stations, Inc.*, 2009) could soon change that.

Though the arguments of illegality have yet to be supported by legal precedent, scholars have been exploring some of the ways in which users are affected by cyber violence and virtual rape.

One argument, supported by Powers (2003), is that speech and actions occurring in virtual environments can significantly impact victims because intentions of other users matter. Also supporting this is media richness theory, which, when borrowed for the purpose of this paper, states that the more information a mode of communication carries, the more impacting it will be. Because virtual communities like Second Life are multi-modal, the amount of information that can be transferred is enormous and effective. Brenner (2008) also supports the idea that intentions are important when considering this argument. The second argument for illegality of virtual rape is that violence leads to violence. This argument is also proposed and supported by Brenner (2008) and follows that violence in virtual environments that goes unpunished could lead to violence in real life. While there is little to no research to back up this claim, the court stated in *Hess v. Indiana* (1973) that speech retains its first Amendment protection even if the speech has a tendency to lead to violence. Legally, this argument is not supported. The final argument for the illegality of virtual rape is that the act inflicts emotional damage even if it does not inflict physical damage. *Twyman v. Twyman* (1993), as well as *Womack v. Eldridge* (1974), were both granted on the grounds that, although there was no physical harm rendered, the emotional harm was reckless and intentional, extreme and outrageous, severe, and that a connection existed between the aggressor's actions and the victim's distress.

The bottom line is that while virtual rape cannot be experienced physically over a network of computer connections, the immersion of the user into the virtual environment and the richness of that environment can cause that user to feel the damaging emotional and psychological distress of rape, making the act more illegality greater.

While arguments on both sides compellingly show their validity, it was determined that virtual rape, although it presents upon victims varying degrees of emotional distress, is currently protected as speech under the First Amendment. In fact, until a case that deals specifically with virtual rape is brought before the court, its legality will not be questioned by the judicial system.

If and when that case is brought before a judge, California state law and administrative code would appropriately regulate it as sexual harassment, as this analysis has shown. While the code does not currently cover acts like virtual rape, it is plainly evident that sexual harassment could be amended to include the characteristic behaviors of virtual rape specifically due to very real harm of emotional injury.

Nonetheless, because virtual rape cannot be pursued in a criminal court, collecting enough evidence, or “digital DNA” such as offender screen name/real name and IP address, screen shots of the ordeal, the virtual world’s terms of service, proof of report, etc., about the incident could help a victim in civil court, though the victim may still need help from computer experts or authorities to obtain some of that information. Such a civil case would be tried under the tort intentional infliction of emotional harm²³ or possibly under assault²⁴. Alternately, the owner/creator of the virtual community (like Linden Labs) might also be considered accountable for not enforcing its terms of service or for investigating any serious reports filed when it knows and understands that threats and offenses like virtual rape occur in its environment. In civil court, Linden Lab could be liable by negligence²⁵ or product

²³See http://topics.law.cornell.edu/wex/intentional_infliction_of_emotional_distress for more information.

²⁴See <http://topics.law.cornell.edu/wex/assault> for more information.

²⁵See <http://topics.law.cornell.edu/wex/negligence> for more information.

liability²⁶. Such threats of lawsuits of these types may pressure Linden Labs to make explicit in its terms of service the types of harmful encounters users may experience/observe in Second Life or to enact a more extensive labeling system for its inhabitants to consider while using the service rather than the two current Mature (M) and non-Mature (PG) ratings.

For this analysis, Ellul's, Postman's, and McLuhan's technologically deterministic ideas were applied to virtual environments. Without the advancement of online communication technologies like voice chat, graphics, etc., experiences in virtual communities would not be as rich today as they clearly are—even the negative ones. Unfortunately, the rate in which technologies are released make it nearly impossible for enforcement institutions to effectively and efficiently protect netizens.

Adaptation of the media richness theory for online communication (email, IRC, voice chat, etc.) to explain the effectiveness of environments in terms of visual, textual, and auditory content as communications could also help create a more robust social presence theory; the richer the communication, the closer players might feel to one another. It is precisely these characteristics that create the rich level of interactivity in virtual environments that make virtual rape so unique and give it the ability to be “experienced,” even if not physically.

There were a few limitations having an effect on this analysis. First, while Lexis Nexis can be a good source of legal information, it was not useful for this analysis. It did provide some useful journal articles but the lack of grasp and experience with the tool limited its functionality. More useful was Westlaw Campus, which was used to locate a number of cases related to the arguments and information found in Chapter 4. Using *West Key Citations*

²⁶ See http://topics.law.cornell.edu/wex/products_liability for more information.

proved especially useful in located cases related to statutes or locating citations related to similar case law. Westlaw Campus also provided a history of each case found that was helpful in determining the usefulness of each case for the purpose of the analysis. Another limitation was lack of accepted theory specifically surrounding virtual environments and accountability and anonymity. More appropriate theory could have made this analysis more cohesive.

Three clear opportunities for further research have come from this analysis. One opportunity is that of being able to adapt media richness theory away from organizational communication to online communication. This adaptation could help create a more robust social presence theory and provide a more concrete understanding of how the richness of virtual environments can positively or negatively influence users of those environments. A second opportunity is determining exactly how subsections C and E of the California Administrative Code, title 2, section 7287.6 can be amended to include the spectrum of cyber violence presented in chapter two. The provisions of the code will have to be revised to encompass online harassment. Finally, after all the information presented and analyzed in this paper, one final issue continues to remain: *should* virtual rape, consensual or not, be made illegal? The answer is heavily subjective at this point and will remain so until a court officially hears a claim specifically concerning this act. Until a court will hear a claim of virtual rape, virtual communities and their creators will create more effective ways to enforce their community standards. Only extensive law research and time will be able to confirm this question.

This thesis hopes to provide a theoretical and legal perspective on virtual rape in virtual communities like Second Life. As well, it hopes to encourage creators and managers

of virtual community spaces to detail any standards created for those communities with information that can only make users more accountable. This thesis also hopes to show creators and managers that the importance of communicating with the community on issues of safety can only increase the safety of the community. Mostly, it is hoped that this thesis brings about a better understanding of virtual rape and its potential effects on individuals and the community. Ultimately, in the author's fair opinion, it will be up to the residents and users who occupy those virtual communities to make them good, productive, social, fun forums for entertainment, news, learning, and even a second life.

REFERENCES

- Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).
- Allendale, D. (2007, May). How exactly does 'virtual rape' even occur in Second Life? Message posted to <http://www.vtoreality.com/2007/how-exactly-does-virtual-rape-even-occur-in-second-life/909/>.
- Barak, A. (2005). Sexual harassment on the Internet. *Social Science and Computer Review*, 23(1), 77-92.
- Barr, T. (2000). Newsmedia.com.au: The changing face of Australia's media and communications. St. Leonards: Allen and Unwin.
- Biocca, F., Harms, C., Burgoon, J.K. (2003). Toward a more robust theory and measure of social presence: Review and suggestion criteria. *Presence*, 12(5), 456-480.
- Bocij, P. (2002). Corporate cyberstalking: An invitation to build theory. *First Monday*, 7(11). Retrieved February 2, 2009, from http://firstmonday.org/issues/issue7_11/bocij/index.html.
- Bocij, P. (2006). *The Dark Side of the Internet*. Westport, CT: Praeger Publishers.
- Berger, P. & Luckmann, T. (1989). *The social construction of reality: A treatise in the sociology of knowledge*. New York: Anchor Books.
- Brandenburg v. Ohio*, 395 U.S. 444 (1969).
- Brenner, S. (2004). The challenge of cybercrime. *CEB Case 'n Point Newsletter*, 6. Retrieved April 20, 2009, from http://ceb.ucop.edu/newsletter/v6/criminal_Law.htm.
- Brenner, S. (2008). Fantasy Crime: The Role of Criminal Law in Virtual Worlds. *Vanderbilt Journal of Entertainment and Technology Law*, 11(1).
- Brownmiller, S. (1975). *Against our will: Men, women, and rape*. New York: Simon and Schuster.
- Bugeja, M. (2007). Second thoughts about Second Life. *The Chronicle of Higher Education*, 54(3), C1. Retrieved October 18, 2007, from <http://chronicle.com/weekly/v54/i03/03c00101.htm>.
- Cal. Admin. Code tit. 2, § 7287.6.

- Cascio, J. (2008). *The griefer future*. Retrieved April 23, 2009, from <http://ieet.org/index.php/IEET/more/cascio20080628/>.
- Child Pornography Prevention Act. Pub.L. No. 104-208, 110 Stat. 3009 (1996).
- Community standards*. (n.d.). Retrieved November 26, 2007, from <http://secondlife.com/corporate/cs.php>.
- Conn, K. (2004). *Bullying and harassment: A legal guide for educators*. Alexandria, VA: Association for Supervision and Curriculum Development.
- Cyberbullying by Proxy* (2005). Retrieved April 24, 2009, from http://www.stopcyberbullying.org/how_it_works/cyberbullying_by_proxy.html.
- Daft, R. L., & Lengel, R. H. (1986). Organizational information requirements, media richness and structural design. *Management Science*, 32(5), 554-571.
- Dennis, A. R. & Kinney, S. T. (1998). Testing media richness theory in the new media: The effects of cues, feedback, and task equivocality. *Information Systems Research*, 9(3), 256-274.
- Derry, S. (1999). A fish called peer learning: Searching for common themes. In A. O'Donnell and A. King (Eds.) *Cognitive perspectives on peer learning* (pp. 197-212). New Jersey: Lawrence Erlbaum Associates.
- Dibbell, J. (1993). A rape in cyberspace: How an evil clown, a Haitian trickster spirit, two wizards, and a cast of dozens turned a database into a society. *The Village Voice*. Retrieved October 15, 2007, from http://www.juliandibbell.com/texts/bungle_vv.html.
- Dibbell, J. (1998). *My tiny life: Crime and passion in a virtual world*. New York: Holt.
- Douglas, K. (2008). Antisocial communication on electronic mail and the Internet. In E. Konijn, S. Utz, M. Tanis, and S. Barnes (Eds.) *Mediated interpersonal communication* (pp. 200-214). New York: Routledge.
- Duranske, B. (2007). Reader roundtable: "Virtual rape" claim brings Belgian police second life. *Virtually Blind*. Retrieved November 26, 2007, from <http://virtuallyblind.com/2007/04/24/open-roundtable-allegations-of-virtual-rape-bring-belgian-police-to-second-life/>.
- Edelmann, P. (June 2005). Framing virtual law. *Proceedings of DiGRA 2005 Conference: Changing views – Worlds in Play*. Vancouver, Canada.

- Ellis, L. (1989). *Theories of rape: Inquiries into the causes of sexual aggression*. New York: Hemisphere Publishing.
- Ellul, J. (1989). *What I believe* (G. W. Bromiley, Trans.). Grand Rapids, MI: Eerdmans. (Original work published 1987).
- F.C.C. v. Fox Television Stations, Inc.*, 129 S. Ct. 1800 (2009).
- Federman, R. (2004). What is the meaning of the medium is the message? Retrieved August 9, 2009, from <http://individual.utoronto.ca/markfederman/MeaningTheMediumistheMessage.pdf>.
- Gibson, W. (1984). *Neuromancer*. New York, NY: Ace Books.
- Golden, D. M. (2004). It's not all in my head: The harm of rape and the prison litigation reform act. *Cardozo Women's Law Journal*, 11(37), 37-60.
- Grabosky, P. (2007). *Electronic crime*. Upper Saddle River, NJ: Pearson Prentice Hall.
- Green, R. (2009). Stalking: It effects every area of your life. *The Journal Gazette*. Retrieved February 25, 2009, from <http://www.journalgazette.net/apps/pbcs.dll/article?AID=/20090201/LOCAL/302019903/1044/LOCAL08>.
- Guest, T. (2007). *Second lives: A journey through virtual worlds*. London: Hutchinson.
- Hess v. Indiana*, 414 U.S. at 109 (1973).
- Holmes, D. (2005). *Communication theory: Media, technology and society*. London: Sage Publications.
- Holzner, B. (1968). *Reality construction in society*. Cambridge, MA: Schenkman Publishing Company, Inc.
- James, W. (1890). *The principles of psychology* (Vol. 2). New York: Henry Holt and Company.
- Jaishankar, K. (2008). Space transition theory of cyber crimes. In F. Schmallenger and M. Pittaro (Eds.) *Crimes of the Internet* (pp. 283-301). New Jersey: Prentice Hall.
- Kendall, L. (1993). Virtual communities. In K. Christensen and D. Levinson (Eds.) *Encyclopedia of community: From village to the virtual world* (pp. 1454-1460). Thousand Oaks, CA: Sage Publications.

- Kilpatrick, D. (2000). *Rape and sexual assault*. National Violence Against Women Prevention Research Center. Retrieved March 22, 2008, from <http://www.musc.edu/vawprevention/research/sa.shtm>.
- Kozlovski, N. (2007). Designing accountable online policing. In J. Balkin, J. Grimmelmann, E. Katz, N. Kozlovski, S. Wagman, and T. Zarsky (Eds.) *Cybercrime: Digital cops in a networked environment* (pp. 107-134). New York: University Press.
- Lamb, B. & Postman, N. (1992, August 30). Interview with Neil Postman. *Booknotes*. Retrieved on November 20, 2009, from <http://www.booknotes.org/Transcript/?ProgramID=1115>.
- Lea, M., O'Shea, T., Fung, P., & Spears, R. (1992). "Flaming" in computer-mediated communications: Observations, explanations, implications. In M. Lea (Ed.) *Contexts of computer-mediated communication* (pp. 89-112). Hertfordshire, UK: Harvester Wheatsheaf.
- Leung, L. (2004). Net-Generation attributes and seductive properties of the Internet as predictors of online activities and Internet addiction. *Cyberpsychology and Behavior*, 7(3), 333-348.
- Linden Lab (2009). *Linden Lab: Makers of Second Life and virtual world platform Second Life Grid* [Linden Lab home page]. Retrieved Feb. 12, 2009, from <http://lindenlab.com/>.
- Linnea (#58017) (1994). "Abuse by Any Other Name." LambdaMOO object #68149. Available electronically from <http://www.portal.com/~rich/index.html#rape>.
- Lynn, R. (May 4, 2007). Virtual rape is traumatic, but is it a crime? *Wired Magazine*. Retrieved November 26, 2007, from http://www.wired.com/culture/lifestyle/commentary/sexdrive/2007/05/sexdrive_0504.
- MacKinnon, R. (1997a). Punishing the persona: Correctional strategies for the virtual offender. In S. G. Jones (Ed.) *Virtual culture: Identity and communication in cybersociety* (pp. 206-235). London: SAGE Publications.
- MacKinnon, R. (1997b). Virtual rape. *Journal of Computer-Mediated Communication*, 2(4). Retrieved October 16, 2007, from <http://jcmc.indiana.edu/vol2/issue4/mackinnon.html>.
- Maturity Ratings* (2009). Retrieved July 23, 2009, from <https://support.secondlife.com/ics/support/default.asp?deptID=4417&task=knowledge&questionID=6010>.

- McFarlane, L. & Bocij, P. (2003). An exploration of predatory behaviour in cyberspace: Towards a typology of cyberstalkers. *First Monday*, 8(9). Retrieved February 3, 2009, from <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1076/996>.
- McGrath, M. & Casey, E. (2002). Forensic psychiatry and the Internet: Practical perspectives on sexual predators and obsessional harassers in cyberspace. *Journal of the American Academy of Psychiatry and the Law*, 30(1), 81-94.
- McLuhan, M. (1964, 1994). *Understanding media: The extensions of man*. New York: Signet.
- Mustaine, E. & Tewksbury, R. (1999). A routine activity theory explanation for women's stalking victimization. *Violence Against Women*, 5(1), 43-62.
- Nancy (#57980). 1994. "Virtual Rape Consequences." LambdaMOO object #60535. Available electronically from <http://www.portal.com/~rich/index.html#rape>.
- Nemeth, C. & Haywood, H. (2005). *Learning legal research: A how-to manual*. Upper Saddle River, NJ: Prentice Hall.
- Nunes, M. (1997). What is cyberspace? In D. Holmes (Ed.) *Virtual politics: Identity and community in cyberspace* (pp. 163-178). Thousand Oaks, CA: Sage.
- O'Connell, P. (2003). Defining Cyberstalker [Electronic version]. *The New York Times*, section G, column 3, pp. 3.
- O'Neil, R. M. (2001). *The First Amendment and civil liability*. Bloomington: Indiana University Press.
- Online Harassment* (2009). Retrieved July 23, 2009, from <http://secondlife.com/policy/security/harassment.php>.
- Police blotter. (2006, June). *Second Opinion*. Retrieved November 26, 2007, from http://secondlife.com/newsletter/2006_06/html/police_blotter.html.
- Police blotter. (2007, November). *Second Opinion*. Retrieved November 26, 2007, from <http://secondlife.com/community/blotter.php>.
- Postman, N. (1992). *Technopoly: The surrender of culture to technology*. New York: Knopf.
- Postman, N. (1998, March 28). Five things we need to know about technological change. In *Proceedings of the NewTech: The New Technologies and the Human Person: Communicating the Faith in the New Millennium*. Denver, Colorado.

- Pathé, M. & Mullen, P. (1997). The impact of stalkers on their victims. *British Journal of Psychiatry*, (170), 12-17.
- Powers, T. (2003). Real wrongs in virtual communities. *Ethics and Information Technology*, 5(4), 191-198.
- Putnam, W. H. (2008). *Pocket guide to legal research*. New York: Thomson Delmar Learning.
- Quinn v. Walsh*, 49 Mass.App.Ct. 696 (2000).
- Reid, E. (1995). Virtual worlds: Culture and imagination. In S. G. Jones (Ed.), *Cybersociety: Computer-mediated communication and community* (pp. 164-183). Thousand Oaks, CA: Sage.
- Rheingold, H. (1992). *Virtual reality*. New York: Simon and Schuster.
- Rosenwald, M. (2004). Every step you take...Every move you make...My GPS unit will be watching you. *Popular Science Magazine* (online). Retrieved on February 23, 2009 from <http://www.popsci.com.au/scitech/article/2004-11/every-step-you-take-every-move-you-make-my-gps-unit-will-be-watching-you?page=#comments>.
- R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377 (1992).
- RVAP (2005). *Cyber-stalking*. Rape Victim Advocacy Program (online). Retrieved February 15, 2009, from <http://www.rvap.org/pages/cyberstalking/>.
- Sartre, D. (2007, May 4). How exactly does 'virtual rape' even occur in Second Life? Retrieved January 17, 2008, from <http://www.vtoreality.com/2007/how-exactly-does-virtual-rape-even-occur-in-second-life/909/>.
- Schell, B. & Martin, C. (2004). *Cybercrime: A reference handbook*. Santa Barbara, CA: ABC-CLIO.
- Schroeder, R. (2002). Social interaction in virtual environments: Key issues, common themes, and a framework for research. In R. Schroeder (Ed.) *The social life of avatars: Presence and interaction in shared virtual environments*(pp. 1-18). New York: Springer.
- Sexual assault* (2005). Retrieved April 30, 2009, from <http://www.womenshealth.gov/FAQ/sexual-assault.cfm#1>.
- Sexual harassment* (2002, June 27). Facts about sexual harassment. U.S. Equal Employment Opportunity Commission. Retrieved April 29, 2008, from <http://www.eeoc.gov/facts/fs-sex.html>.

- Short, J., Williams, E., & Christie, B. (1976). *The social psychology of telecommunications*. London: John Wiley and Sons.
- Simpson, D. (2000). Feds find dangerous cyberstalking hard to prevent. *CNN* [Online version]. Retrieved March 10, 2009, from <http://archives.cnn.com/2000/TECH/computing/06/12/cyberstalkers.idg/index.html>.
- Sklar, U. & Semaphore, E. (2007, January 28). Ageplay in Second Life: Interview with Jailbait manager Emily Semaphore. *The Alphaville Herald*. Retrieved April 13, 2009, from http://www.secondlifeherald.com/slh/2007/01/ageplay_in_seco.html.
- Sohn, D. & Leckenby, J. D. (2007). A structural solution to communication dilemmas in a virtual community. *Journal of Communication*, 57(3), 435-449.
- Spencer, S. (2000). An online tragedy: Some learn to fight back. *CBS News* [Online]. Retrieved March 10, 2009, from http://www.cbsnews.com/stories/2000/03/23/48hours/main175556.shtml?source=search_story.
- Stone, A. (1991). Will the real body please stand up?: Boundary stories about virtual cultures. In M. Benedikt (Ed.) *Cyberspace: First steps*, (pp. 81-118). Cambridge: MIT Press.
- Sunstein, C. R. (1993, January). On analogical reasoning. *Harvard Law Review*, 106(3), 741-791.
- Terdiman, D. (2007). Counting the real Second Life population. *CNET News*. Retrieved February 12, 2009, from http://news.cnet.com/Counting-the-real-Second-Life-population/2100-1043_3-6146943.html.
- Terms of service* (n.d.). Retrieved July 23, 2009, from <http://secondlife.com/corporate/tos.php>.
- Thomas, D. & Loader, B. (2000). Introduction - cybercrime: Law enforcement, security, and surveillance in the information age. In D. Thomas and B. Loader (Eds.) *Cybercrime: Law enforcement, security, and surveillance in the information age*, (pp. 1-14). New York: Routledge.
- Turkle, S. (1995). *Life on the screen: Identity in the age of the Internet*. New York: Simon and Schuster.
- Twyman v. Twyman*, 855 S.W.2d 619 (1993).

- Wagner, M. (2007). Sex in Second Life. *Information Week* [Online]. Retrieved February 19, 2009, from <http://www.informationweek.com/news/software/hosted/showArticle.jhtml?articleID=199701944>.
- Wall, D. (2001). Cybercrimes and the Internet. In D. Wall (Ed.) *Crime and the internet*, (pp. 1-17). London: Routledge.
- Wall, D. (2007). *Cybercrime: The transformation of crime in the information age*. Malden: Polity Press.
- Weber, A. (2007). Belgian police patrols second life to prevent rape. *Second Life Insider*. Retrieved November 26, 2007, from <http://www.secondlifeinsider.com/2007/04/21/belgian-police-patrols-second-life-to-prevent-rape/>.
- West's Ann.Cal.Penal Code § 261
- West's Ann.Cal.Penal Code § 646.9
- What is cyberbullying?* (2005). Retrieved April 24, 2009, from http://www.stopcyberbullying.org/what_is_cyberbullying_exactly.html.
- What is Second Life?* (2009). Retrieved April 13, 2009, from <http://secondlife.com/whatis/faq.php#01>.
- Williams, K., Cheung, C., & Choi, W. (2000). Cyberostracism: Effects of being ignored over the Internet. *Journal of Personality and Social Psychology*, 79(5), 748-762.
- Williams, M. (2000). Virtually criminal: Discourse, deviance and anxiety within virtual communities. *International Review of Law, Computers, and Technology*, 14(1), 95-104.
- Williams, M. (2006). *Virtually criminal: Crime, deviance and regulation online*. London; New York: Routledge.
- Wired Safety (2005a). Are there different types of cyberstalking/harassment situations? *WiredSafety.org* [Online]. Retrieved March 2, 2009, from http://www.wiredsafety.org/cyberstalking_harassment/csh6.html.
- Wired Safety (2005b). Why do people cyberstalk or cyberharass others? *WiredSafety.org* [Online]. Retrieved February 25, 2009, from http://www.wiredsafety.org/cyberstalking_harassment/csh1.html.
- United States v. Alkhabaz*, 104 F.3d 1492 (1997).

U.S. Department of Justice (1999). *Cyberstalking: A new challenge for law enforcement and industry: A report from the Attorney General to the Vice President*. Retrieved February 3, 2009, from <http://www.usdof.gov/criminal/cybercrime/cyberstalking.htm>.

Bureau of Justice Statistics Special Report (2009). *National crime victimization survey: Stalking victimization in the United States*. Retrieved February 3, 2009, from www.ojp.usdoj.gov/bjs/pub/pdf/svus.pdf.

Volokh, E. (May 4, 2007 at 2:52pm). *Talking about forced sex of avatars = crime?* Retrieved November 26, 2008, from <http://volokh.com/posts/1178304775.shtml>.

Womack v. Eldridge, 215 Va. 338 (1974).

World of Warcraft (December 23, 2008). *World of Warcraft subscriber base reaches 11.5 million worldwide*. Retrieved April 20, 2009, from <http://www.blizzard.com/us/press/081121.html>.

APPENDIX A

THE SERVICES AND CONTENT OF SECOND LIFE

1.1 Basic description of the service: Second Life, a multi-user environment, including software and websites.

"Second Life" is the multi-user online service offered by Linden Lab, including the software provided to you by Linden Lab (collectively, the "Linden Software") and the online environments that support the service, including without limitation: the server computation, software access, messaging and protocols that simulate the Second Life environment (the "Servers"), the software that is provided by Linden Lab and installed on the local computer or other device you use to access the Servers and thereby view or otherwise access the Second Life environment (the "Viewer"), application program interfaces provided by Linden Lab to you for use with Second Life (the "APIs"), and access to the websites and services available from the domain and subdomains of <http://secondlife.com> (the "Websites"). The Servers, Viewer, APIs, Websites and any other Linden Software collectively constitute the "Service" as used in this Agreement.

1.2 Linden Lab is a service provider, which means, among other things, that Linden Lab does not control various aspects of the Service.

You acknowledge that Linden Lab is a service provider that may allow people to interact online regarding topics and content chosen by users of the service, and that users can alter the service environment on a real-time basis. Linden Lab generally does not regulate the content of communications between users or users' interactions with the Service. As a result, Linden Lab has very limited control, if any, over the quality, safety, morality, legality, truthfulness or accuracy of various aspects of the Service.

1.3 Content available in the Service may be provided by users of the Service, rather than by Linden Lab. Linden Lab and other parties have rights in their respective content, which you agree to respect.

You acknowledge that: (i) by using the Service you may have access to graphics, sound effects, music, video, audio, computer programs, animation, text and other creative output (collectively, "Content"), and (ii) Content may be provided under license by independent content providers, including contributions from other users of the Service (all such independent content providers, "Content Providers"). Linden Lab does not pre-screen Content.

You acknowledge that Linden Lab and other Content Providers have rights in their respective Content under copyright and other applicable laws and treaty provisions, and that except as described in this Agreement, such rights are not licensed or otherwise transferred by mere use of the Service. You accept full responsibility and liability for your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from Linden Lab.

ACCOUNT REGISTRATION AND REQUIREMENTS

2.1 You must establish an account to use Second Life, using true and accurate registration information.

You must establish an account with Linden Lab (your "Account") to use the Service, except for those portions of the Websites to which Linden Lab allows access without registration. You agree to provide true, accurate, current and complete information about yourself as prompted by the registration form ("Registration Data") and maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You may establish an Account with Registration Data provided to Linden Lab by a third party through the use of an API, in which case you may have a separate, additional account relationship with such third party. You authorize Linden Lab, directly or through third parties, to make any inquiries we consider necessary to validate your Registration Data. Linden Lab reserves all rights to vigorously pursue legal action against all persons who misrepresent personal information or are otherwise untruthful about their identity, and to suspend or cancel Accounts registered with inaccurate or incomplete information. Notwithstanding the foregoing, you acknowledge that Linden Lab cannot guarantee the accuracy of any information submitted by any user of the Service, nor any identity information about any user.

2.2 You must be 13 years of age or older to access Second Life; minors over the age of 13 are only permitted in a separate area, which adults are generally prohibited from using. Linden Lab cannot absolutely control whether minors or adults gain unauthorized access to the Service.

You must be at least 13 years of age to participate in the Service. Users under the age of 18 are prohibited from accessing the Service other than in the area designated by Linden Lab for use by users from 13 through 17 years of age (the "Teen Area"). Users age 18 and older are prohibited from accessing the Teen Area. Any user age 18 and older who gains unauthorized access to the Teen Area is in breach of this Agreement and may face immediate termination of any or all Accounts held by such user for any area of the Service. If you reside in a jurisdiction where the age of majority is greater than 18 years old, you are prohibited from accessing the Service until you have reached such age of majority.

By accepting this agreement in connection with an Account outside the Teen Area, you represent that you are an adult 18 years of age or older. By accepting this agreement in connection with an Account for use in the Teen Area, you represent that (i) you are at least 13 years of age and less than 18 years of age; (ii) you have read and accept this Agreement; (iii) your parent or legal guardian has consented to you having an Account for use of the Teen Area and participating in the Service, and to providing your personal information for your Account; and (iv) your parent or legal guardian has read and accepted this Agreement.

Linden Lab cannot absolutely control whether minors gain access to the Service other than the Teen Area, and makes no representation that users outside the Teen Area are not minors. Linden Lab cannot absolutely control whether adults gain access to the Teen Area of

the Service, and makes no representation that users inside the Teen Area are not adults. Adult employees, contractors and partners of Linden Lab regularly conduct their work in the Teen Area. Linden Lab cannot ensure that other users or any non-employee of Linden Lab will not provide Content or access to Content that parents or guardians may find inappropriate or that any user may find objectionable.

2.3 You need to use an account name in Second Life which is not misleading, offensive, or infringing. You must select and keep secure your account password.

You must choose an account name to identify yourself to Linden Lab staff (your "Account Name"), which will also serve as the name for the graphical representation of your body in the Service (such representation, an "Avatar"). You may not select as your Account Name the name of another person to the extent that could cause deception or confusion; a name which violates any trademark right, copyright, or other proprietary right; a name which may mislead other users to believe you to be an employee of Linden Lab; or a name which Linden Lab deems in its discretion to be vulgar or otherwise offensive. Linden Lab reserves the right to delete or change any Account Name for any reason or no reason. You are fully responsible for all activities conducted through your Account or under your Account Name.

At the time your Account is opened, you must select a password. You are responsible for maintaining the confidentiality of your password and are responsible for any harm resulting from your disclosure, or authorizing the disclosure of, your password or from use by any person of your password to gain access to your Account or Account Name. At no time should you respond to an online request for a password other than in connection with the log-on process to the Service. Your disclosure of your password to any other person is entirely at your own risk.

2.7 Accounts affiliated with delinquent accounts are subject to remedial actions related to the delinquent account.

In the event an Account is suspended or terminated for your breach of this Agreement or your payment delinquency (in each case as determined in Linden Lab's sole discretion), Linden Lab may suspend or terminate the Account associated with such breach and any or all other Accounts held by you or your affiliates, and your breach shall be deemed to apply to all such Accounts.

CONDUCT BY USERS OF SECOND LIFE

4.1 You agree to abide by certain rules of conduct, including the Community Standards and other rules prohibiting illegal and other practices that Linden Lab deems harmful.

You agree to read and comply with the Community Standards posted on the Websites, (for users 18 years of age and older, at <http://secondlife.com/corporate/cs.php>; and for users of the Teen Area, at <http://teen.secondlife.com/footer/cs>

In addition to abiding at all times by the Community Standards, you agree that you shall not: (i) take any action or upload, post, e-mail or otherwise transmit Content that infringes or violates any third party rights; (ii) impersonate any person or entity without their consent, including, but not limited to, a Linden Lab employee, or falsely state or otherwise misrepresent your affiliation with a person or entity; (iii) take any action or upload, post, e-mail or otherwise transmit Content that violates any law or regulation; (iv) take any action or upload, post, e-mail or otherwise transmit Content as determined by Linden Lab at its sole discretion that is harmful, threatening, abusive, harassing, causes tort, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (v) take any actions or upload, post, e-mail or otherwise transmit Content that contains any viruses, Trojan horses, worms, spyware, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (vi) take any action or upload, post, email or otherwise transmit any Content that would violate any right or duty under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (vii) upload, post, email or otherwise transmit any unsolicited or unauthorized advertising, or promotional materials, that are in the nature of "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation that Linden Lab considers in its sole discretion to be of such nature; (viii) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service; (ix) attempt to gain access to any other user's Account or password; or (x) "stalk", abuse or attempt to abuse, or otherwise harass another user. Any violation by you of the terms of the foregoing sentence may result in immediate and permanent suspension or cancellation of your Account. You agree that Linden Lab may take whatever steps it deems necessary to abridge, or prevent behavior of any sort on the Service in its sole discretion, without notice to you.

RELEASES, DISCLAIMERS OF WARRANTY, LIMITATION OF LIABILITY, AND INDEMNIFICATION

5.1 You release Linden Lab from your claims relating to other users of Second Life. Linden Lab has the right but not the obligation to resolve disputes between users of Second Life.

As a condition of access to the Service, you release Linden Lab (and Linden Lab's shareholders, partners, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, distributors) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with any dispute you have or claim to have with one or more users of the Service. You further understand and agree that: (a) Linden Lab will have the right but not the obligation to resolve disputes between users relating to the Service, and Linden Lab's resolution of any particular dispute does not create an obligation to resolve any other dispute; (b) to the extent Linden Lab elects to resolve such disputes, it will do so in good faith based solely on the general rules and

standards of the Service and will not make judgments regarding legal issues or claims; (c) Linden Lab's resolution of such disputes will be final with respect to the virtual world of the Service but will have no bearing on any real-world legal disputes in which users of the Service may become involved; and (d) you hereby release Linden Lab (and Linden Lab's shareholders, partners, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, distributors) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with Linden Lab's resolution of disputes relating to the Service.

DISPUTE RESOLUTION

If a dispute arises between you and Linden Lab, our goal is to provide you with a neutral and cost-effective means of resolving the dispute quickly. Accordingly, you and Linden Lab agree to resolve any claim or controversy at law or in equity that arises from or relates to this Agreement or our Service (a "Claim") in accordance with one of the subsections below.

7.1 Governing Law. This Agreement and the relationship between you and Linden Lab shall be governed in all respects by the laws of the State of California without regard to conflict of law principles or the United Nations Convention on the International Sale of Goods.

APPENDIX B

COMMUNITY STANDARDS

Welcome to the Second Life world!

We hope you'll have a richly rewarding experience, filled with creativity, self expression and fun.

The goals of the Community Standards are simple: treat each other with respect and without harassment, adhere to local standards as indicated by simulator ratings, and refrain from any hate activity which slurs a real-world individual or real-world community. Behavioral Guidelines - The 'Big Six'

Within Second Life, we want to support Residents in shaping their specific experiences and making their own choices.

The Community Standards sets out six behaviors, the 'Big Six', that will result in suspension or, with repeated violations, expulsion from the Second Life Community.

All Second Life Community Standards apply to all areas of Second Life, the Second Life Forums, and the Second Life Website.

1. Intolerance

Combating intolerance is a cornerstone of Second Life's Community Standards. Actions that marginalize, belittle, or defame individuals or groups inhibit the satisfying exchange of ideas and diminish the Second Life community as whole. The use of derogatory or demeaning language or images in reference to another Resident's race, ethnicity, gender, religion, or sexual orientation is never allowed in Second Life.

2. Harassment

Given the myriad capabilities of Second Life, harassment can take many forms. Communicating or behaving in a manner which is offensively coarse, intimidating or threatening, constitutes unwelcome sexual advances or requests for sexual favors, or is otherwise likely to cause annoyance or alarm is Harassment.

3. Assault

Most areas in Second Life are identified as Safe. Assault in Second Life means: shooting, pushing, or shoving another Resident in a Safe Area (see Global Standards below); creating or using scripted objects which singularly or persistently target another Resident in a manner which prevents their enjoyment of Second Life.

4. Disclosure

Residents are entitled to a reasonable level of privacy with regard to their Second Life experience. Sharing personal information about a fellow Resident --including gender, religion, age, marital status, race, sexual preference, and real-world location beyond what is provided by the Resident in the First Life page of their Resident profile is a violation of that Resident's privacy. Remotely monitoring conversations, posting conversation logs, or sharing conversation logs without consent are all prohibited in Second Life and on the Second Life Forums.

5. Indecency

Second Life is an adult community, but Mature material is not necessarily appropriate in all areas (see Global Standards below). Content, communication, or behavior which involves intense language or expletives, nudity or sexual content, the depiction of sex or violence, or anything else broadly offensive must be contained within private land in areas rated Mature (M). Names of Residents, objects, places and groups are broadly viewable in Second Life directories and on the Second Life website, and must adhere to PG guidelines.

6. Disturbing the Peace

Every Resident has a right to live their Second Life. Disrupting scheduled events, repeated transmission of undesired advertising content, the use of repetitive sounds, following or self-spawning items, or other objects that intentionally slow server performance or inhibit another Resident's ability to enjoy Second Life are examples of Disturbing the Peace.

POLICIES AND POLICING

Global Standards, Local Ratings

All areas of Second Life, including the www.secondlife.com website and the Second Life Forums, adhere to the same Community Standards. Locations within Second Life are noted as Safe or Unsafe and rated Mature (M) or non-Mature (PG), and behavior must conform to the local ratings. Any unrated area of Second Life or the Second Life website should be considered non-Mature (PG).

Warning, Suspension, Banishment

Second Life is a complex society, and it can take some time for new Residents to gain a full understanding of local customs and mores. Generally, violations of the Community Standards will first result in a Warning, followed by Suspension and eventual Banishment from Second Life. In-World Representatives, called Liaisons, may occasionally address disciplinary problems with a temporary removal from Second Life.

Global Attacks

Objects, scripts, or actions which broadly interfere with or disrupt the Second Life community, the Second Life servers or other systems related to Second Life will not be

tolerated in any form. We will hold you responsible for any actions you take, or that are taken by objects or scripts that belong to you. Sandboxes are available for testing objects and scripts that have components that may be unmanageable or whose behavior you may not be able to predict. If you chose to use a script that substantially disrupts the operation of Second Life, disciplinary actions will result in a minimum two-week suspension, the possible loss of in-world inventory, and a review of your account for probable expulsion from Second Life.

Alternate Accounts

While Residents may choose to play Second Life with more than one account, specifically or consistently using an alternate account to harass other Residents or violate the Community Standards is not acceptable. Alternate accounts are generally treated as separate from a Resident's principal account, but misuse of alternate accounts can and will result in disciplinary action on the principal account.

Buyer Beware

Linden Lab does not exercise editorial control over the content of Second Life, and will make no specific efforts to review the textures, objects, sounds or other content created within Second Life. Additionally, Linden Lab does not certify or endorse the operation of in-world games, vending machines, or retail locations; refunds must be requested from the owners of these objects.

Reporting Abuse

Residents should report violations of the Community Standards using the Abuse Reporter tool located under the Help menu in the in-world tool bar. Every Abuse Report is individually investigated, and the identity of the reporter is kept strictly confidential.

APPENDIX C

West's Ann. Cal. Penal Code § 261. Rape defined:

(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury,

or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

APPENDIX D

West's Ann. Cal. Penal Code § 646.9

West's Annotated California Codes Currentness

Penal Code (Refs & Annos)

Part 1. Of Crimes and Punishments

View the full text of all sections at this level Title 15. Miscellaneous Crimes

View the full text of all sections at this level Chapter 2. Of Other and Miscellaneous Offenses (Refs & Annos)

Current Section§ 646.9. Stalking

(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c)(1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(g) For the purposes of this section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.”

(h) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k)(1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(l) For purposes of this section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend

that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

APPENDIX E

Cal. Admin. Code tit. 2, § 7287.6

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

TITLE 2. ADMINISTRATION

DIVISION 4. FAIR EMPLOYMENT AND HOUSING COMMISSION

CHAPTER 2. DISCRIMINATION IN EMPLOYMENT

SUBCHAPTER 2. PARTICULAR EMPLOYMENT PRACTICES

This database is current through 7/17/09, Register 2009, No. 29

§ 7287.6. Terms, Conditions and Privileges of Employment.

(b) Harassment.

(1) Harassment includes but is not limited to:

(A) Verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act;

(B) Physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual on a basis enumerated in the Act;

(C) Visual forms of harassment, e.g., derogatory posters, cartoons, or drawings on a basis enumerated in the Act; or

(D) Sexual favors, e.g., unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors. [See also Section 7291.1 (f) (1).]

(E) In applying this subsection, the rights of free speech and association shall be accommodated consistently with the intent of this subsection.