

TRANSACTIONS OF VIRTUAL ITEMS IN VIRTUAL WORLDS

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I. INTRODUCTION

Right now there is a man somewhere entering a shoe store. Inside the store, television monitors are broadcasting information on the latest footwear. Other customers are browsing through the displays piled high with shoeboxes. The man speaks to the salesperson and then selects a pair of sneakers. As he leaves the store he realizes the shoes are not exactly what he saw advertised on the television screens. Confused, the man backtracks into the store and asks to make a return. “We don’t give refunds here,” replies the salesperson, “this isn’t real life.”

A scenario like that occurred in Second Life, an online virtual world.¹ A virtual world is a place online, accessed by either a computer program or website, where many people² can interact with each other and their environment.³ One way users can interact is by buying or selling items they make or find in the virtual world.⁴ Some virtual worlds use a pretend unlimited virtual world currency.⁵ Others use a currency that can be

¹ Second Life, <http://www.secondlife.com> (last visited March 9, 2008).

² The largest communities of virtual world users are enormous. World of Warcraft’s website mentions “thousands of players” World of Warcraft Community Site Guide, <http://www.worldofwarcraft.com/info/basics/guide.html> (last visited March 9, 2008). Further, World of Warcraft has at least eight million players. Julian Dibbell, *The Life of the Chinese Gold Farmer*, N.Y. TIMES MAG., June 17, 2007, at 36. Second Life has approximately two million users. Adam Pasick a.k.a. Adam Reuters, *Europe Takes Lead in Second Life Users*, REUTERS SECOND LIFE NEWS CENTER, Feb. 9, 2007, <http://secondlife.reuters.com/stories/2007/02/09/europe-takes-lead-in-second-life-users>. Adam Reuters is “Reuters’ bureau chief in Second Life. In real life, he is Adam Pasick, a veteran tech and media journalist.” Reuters, *Who is Adam Reuters?*, <http://secondlife.reuters.com/> (last visited March 9, 2008).

³ Richard A. Bartle, *Virtual Worldliness: What the Imaginary Asks of the Real*, 49 N.Y.L. SCH. L. REV. 19, 19 (2004–2005).

⁴ See, e.g., Second Life, Frequently Asked Questions, <http://secondlife.com/whatis/faq.php#12> (last visited March 9, 2008) (“[Second Life Residents] can buy and sell anything that can be made in-world, from clothes, skins, wigs, jewelry, and custom animations for avatars, to furniture, buildings, weapons, vehicles, games, and more.”); World of Warcraft Merchants, <http://worldofwarcraft.com/info/basics/merchants.html> (last visited March 9, 2008) (discussing how players may buy or sell goods).

⁵ See, e.g., World of Warcraft Community Site In-Game Support, *How Does Money Work?*, <http://www.blizzard.com/support/wowGM/?id=agm01044p> (last visited Sept. 24, 2007) (listing money denominations and explaining the money has “no weight”); World of Warcraft Terms of Use, <http://www.worldofwarcraft.com/legal/termsofuse.html> (removing ownership rights from all in-game objects including virtual money) (last visited March 9, 2008).

directly exchanged for an authentic, real-world currency.⁶ The trade of virtual items has taken off in virtual worlds.⁷ However, transactions in virtual items are a new frontier for the law of contracts and have produced confusion similar to that of our virtual man at the shoe store.⁸

This article argues that the parties to transactions involving virtual items in virtual worlds have expectations that differ from those of buyers and sellers of real-life goods or services. Contract law in virtual worlds should adapt to match user expectations.⁹ Virtual world contract law is increasingly important as virtual commerce expands¹⁰ and new virtual markets are founded.¹¹

⁶ *E.g.*, Second Life, Economy, <http://secondlife.com/whatis/economy.php> (last visited March 9, 2008).

⁷ *See, e.g.*, Cory Ondrejka, *Escaping the Gilded Cage: User Created Content and Building the Metaverse*, 49 N.Y.L. SCH. L. REV. 81, 81 (2004-2005) (mentioning that “millions of players . . . spend tremendous amounts of time and money . . . [playing and] trading . . .” in virtual worlds); Dibbell, *supra* note 2, at 36 (noting that there is “a \$1.8 billion worldwide trade in virtual items”); Richard Siklos, *A Virtual World but Real Money*, N.Y. TIMES, Oct. 19, 2006, at C4 (noting that as of October 2006, “as much as \$500,000” a day in real currency was being exchanged in Second Life); Alex Veiga, *Second Life an Online First for Many Companies*, MSNBC, Feb. 26, 2007, <http://www.msnbc.msn.com/id/17284628> (stating that attractions in virtual worlds are “becoming big business” for companies such as IBM Corp., Intel Corp., and Warner Bros. Records); Laura Tiffany, *Starting a Second Life Business: Virtual Money Can Turn into Real Money in Online World*, Feb. 22, 2007, <http://www.msnbc.msn.com/id/17280460> (stating that one “virtual real-estate developer” earned one million dollars in Second Life).

⁸ *See* The Second Life of Judge Richard A. Posner (Internet Interview with Richard A. Posner, Judge, 7th Circuit Court of Appeals, in Second Life on Dec. 7, 2006), <http://www-news.uchicago.edu/citations/06/061211.posner-secondlife.html> (courtesy of [nwn.blogs.com](http://www.nwn.blogs.com)) (discussing issues regarding applying law in virtual worlds).

⁹ *See* James D. Hornbuckle, *The Uniform Computer Information Transaction Act: State Legislatures Should Take a Critical Look Before Clicking Away Consumer Protections*, 23 WHITTIER L. REV. 839, 861 (2002) (“Nearly everyone agrees that current commercial laws drafted decades ago to cover the sale of physical goods, such as toasters and cars, are inadequate when it comes to the licensing of information and E-commerce, where ‘intangible’ products are typically licensed.”).

¹⁰ *See, e.g.*, Siklos, *supra* note 7, at C4 (stating that Second Life’s Economy was growing at a rate of approximately fifteen percent each month as of October 2006).

¹¹ Jack M. Balkin, *Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds*, 90 VA. L. REV. 2043, 2044 (2004) (“[V]irtual worlds . . . will [soon] be adopted for commerce, for education, for professional, military, and vocational training, for medical consultation and psychotherapy, and even for social and economic experimentation to test how social norms develop”); *see also* Veiga, *supra* note 7 (pointing out that a number of “major companies . . . have

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Part II of this article details the continuing struggle between virtual world owners and users over the virtual property traded in these markets, as background to the contractual issue that is the focus of this article. Part III presents the results of interviews with virtual world users that the author conducted to determine the users' contractual expectations, and compares the users' expectations to various forms of existing contract law. Part IV offers a proposal for how contract law can adapt to fit transactions in virtual worlds.

II. PROPERTY RIGHTS IN VIRTUAL WORLDS

A. End User License Agreements

The sale of virtual items and currency in exchange for real money has been met with a negative response from some virtual-world-makers.¹² A virtual-world-maker will commonly only allow entry to a virtual world after a user has agreed to an End User License Agreement (EULA): a contract that generally removes the user's property rights to anything within the virtual world, including items the user builds or creates himself or herself using the tools the virtual-world-maker has provided.¹³ Because under

established a presence in Second Life”).

¹² See, e.g., Joshua A.T. Fairfield, *Virtual Property*, 85 B.U. L. REV. 1047, 1082 (2005) (describing how game makers coerce users to contract away their intellectual property rights); Beth Simone Noveck, *Trademark Law and the Social Construction of Trust: Creating the Legal Framework for Online Identity*, 83 WASH. U. L.Q. 1733, 1734–35 (2005) (describing how Sony, the owner of Everquest, ended an eBay auction of an Everquest 2 user's avatar); Andrew D. Schwarz & Robert Bullis, *Rivalrous Consumption and the Boundaries of Copyright Law: Intellectual Property Lessons from Online Games*, 10 INTELL. PROP. L. BULL. 13, 18–19 (2005–2006) (citing Everquest User Agreement and Software License, <http://eqplayers.station.sony.com/index.vm> (follow “Rules & Policies” hyperlink; then follow “User Agreement and Software License” hyperlink (last visited March 9, 2008) (noting that Sony claims it owns users' avatars and has banned users who attempted to sell virtual world currency))); Molly Stephens, *Sales of In-Game Assets: An Illustration of the Continuing Failure of Intellectual Property Law to Protect Digital-Content Creators*, 80 TEX. L. REV. 1513, 1516 (2002) (citing Leslie Brooks Suzukamo, *Online Role Playing Games Gain in Popularity*, KNIGHT RIDDER-TRIBUNE BUS. NEWS, Feb. 26, 2001; Lum the Mad, *eBay and the Tides of Time: The Real Economy of a Virtual World*, <http://lux.xrgaming.net/ebay.html> (Apr. 20, 2000) (on file with Texas Law Review)) (noting that Sony claims an intellectual property interest in the sales of objects from EverQuest and has twice shut down eBay auctions threatening that interest).

¹³ Fairfield, *supra* note 12, at 1082.

many EULAs a user has no property rights to in-game items, some virtual-world-makers consider any arrangements between users to exchange virtual items for real money to be illegal and potentially dangerous to the economy of their virtual worlds.¹⁴ Blizzard Entertainment, the maker of the popular game World of Warcraft,¹⁵ has attempted to enforce its claimed property rights by shutting down accounts of individuals who engage in allegedly illicit transactions.¹⁶ Sony similarly enforces its claimed rights to EverQuest II by restricting the sale of in-game items and currency to its own website¹⁷ and aggressively prohibiting sales elsewhere.¹⁸

¹⁴ Andrew E. Jankowich, *Property and Democracy in Virtual Worlds*, 11 B.U. J. SCI. & TECH. L. 173, 182 (2005) [hereinafter Jankowich, *Property & Democracy*] (citing World of Warcraft Community Site, Selling World of Warcraft In-Game Content for Real Money, <http://www.worldofwarcraft.com/news/announcements.html> (last visited March 9, 2008)). See also Daniel Terdiman, *Virtual Trade Tough Nut to Crack*, WIRED, Dec. 20, 2004, available at <http://www.wired.com/gaming/gamingreviews/news/2004/12/66074> (discussing virtual world proprietors' likely motivation for maintaining restrictions on property rights within their virtual worlds).

¹⁵ Blizzard Entertainment, Company Profile, <http://www.blizzard.com/inblizz/profile.shtml> (last visited March 9, 2008).

¹⁶ See World of Warcraft, Archived News, World of Warcraft Accounts Closed Worldwide, <http://www.worldofwarcraft.com/news/rss-10-2006.xml> (last visited March 9, 2008) (announcing that Blizzard closed more than 76,000 World of Warcraft user accounts and removed 11 million gold from the game economy in September 2006, because the account-holders had violated the Terms of Use by selling World of Warcraft content and engaging in other impermissible activities). Gold is a form of currency in the World of Warcraft virtual world. See World of Warcraft, F.A.Q., How Does the Trading Interface Work?, <http://www.worldofwarcraft.com/info/faq/items.html> (last visited March 9, 2008) (advising potential players that gold may be traded in exchange for items from other players).

¹⁷ See Station Exchange, What is Station Exchange?, <http://stationexchange.station.sony.com> (last visited March 9, 2008) ("Station Exchange is the official Sony Online Entertainment auction service that provides players a secure method of buying and selling the right to use in game coin, items and characters in accordance with SOE's license agreement, rules and guidelines").

¹⁸ See, e.g., Noveck, *supra* note 12, at 1735.

Sony demanded that eBay suspend Colin's auction. It claimed that Colin was selling intellectual property that belonged to Sony. The Kerra Buiser avatar, though designed and brought to life by Colin and the identity he assumed over several months of play in Everquest, was, according to the terms of the Everquest user agreement, the property of Sony Online Entertainment Inc. eBay, consistent with its Verified Rights Owners Program (VeRO) and the terms of its own subscriber contract, acceded to Sony's request and took down Colin's auction. After Colin tried to re-list his auction, eBay terminated Colin's eBay account and, with it, eight years

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B. The Recognition of User Property Rights In Virtual Worlds

Despite objections from some virtual-world-makers,¹⁹ virtual-world-makers' claims to ownership over everything within their virtual worlds have come under fire from both scholars and other virtual-world-makers.

1. Scholarly Recognition of User Property Rights in Virtual Worlds

There are three main arguments for users' property rights in virtual items: (1) Some EULAs are unenforceable, (2) traditional labor-based property theory, and (3) public policy considerations.

First, a EULA only removes virtual world users' property rights if the EULA is enforceable.

[It is] logically backwards to say that the end user license agreement takes care of everything because, analytically, what you want to say is, "Well, what's the default position? If we didn't have a license at all, who would have ownership rights in this creation?" Then you ask whether or not that is changed by the end user license agreement; and then third, you ask whether or not that end user license agreement is enforceable.²⁰

of stellar reputation ratings, the feedback evaluations given by buyers to a good seller in the eBay marketplace. Future buyers rely heavily on reputation when deciding whether to transact across long distances with an unknown seller. Reputation points are gold on eBay and without them, Colin's ability to sell, not simply virtual goods, but the contents of his basement, is severely impeded. He was distraught.

Id. (citing eBay, Verified Rights Owners Program, <http://pages.ebay.com/help/community/vero-aboutme.html> (last visited March 9, 2008); Peter Kollock, *The Productions of Trust in Online Markets*, 16 *ADVANCES IN GROUP PROCESSES* 99 (1999)).

¹⁹ See, e.g., Jankowich, *Property & Democracy*, *supra* note 14, at 182 (citing World of Warcraft Community Site, Selling World of Warcraft In-Game Content for Real Money, <http://www.worldofwarcraft.com/news/announcements.html> (last visited March 9, 2008)) (discussing Blizzard's defense of its prohibition on sales of virtual items outside the game).

²⁰ Symposium, *Rules & Borders—Regulating Digital Environments, Panel 3—Ownership in Online Worlds*, 21 *SANTA CLARA COMPUTER & HIGH TECH. L.J.* 807, 808 (2005) [hereinafter *Rules & Borders, Panel 3*]. But see Allkhazam's Magic Realm, <http://wow.allkhazam.com/forum.html?forum=28;mid=1160669529258154721;num=5;page=1> (last visited March 9, 2008) (where at least one user, when asked about his or her expectations when contracting for virtual goods or virtual currency, thought that analysis should start and end at the EULA: "considering we have no laws on virtual goods, how can you possibly have a contract law dispute when the virtual goods are subject to copyright laws?").

Some EULAs are clear contracts of adhesion.²¹ There is no real negotiation involved in drafting EULAs, and the agreements themselves are sometimes difficult to access, complex, contained in multiple documents, and changeable at will without notice by the virtual-world-maker.²² Some virtual world experts, including one Sony executive, have suggested that there are limits on the terms EULAs can impose on users.²³

Second, virtual world users' property rights are supported by traditional property theory:²⁴ "Earning both real and virtual

²¹ See, e.g., Fairfield, *supra* note 12, at 1083 (citing World of Warcraft Terms of Use Agreement, <http://www.worldofwarcraft.com/legal/termsofuse.shtml> (last visited, March 9, 2008); Mark A Lemley, *Intellectual Property and Shrinkwrap Licenses*, 68 S. CAL. L. REV. 1239, 1240–47 (1995) (suggesting that World of Warcraft's EULA is an adhesion contract); see also Andrew Jankowich, *EULAw: The Complex Web of Corporate Rule-Making in Virtual Worlds*, 8 TUL. J. TECH. & INTELL. PROP. 1, 7 (2006) [hereinafter Jankowich, *EULAw*] (citing James Grimmelmann, *Virtual Power Politics*, at 8, available at <http://james.grimmelmann.net/files/VirtualPowerPolitics.pdf> (last visited March 9, 2008)) (stating that users must either agree to the agreement's terms or refrain from participating in the virtual world). An adhesion contract is "[a] standard-form contract prepared by one party, to be signed by the party in a weaker position, usu[ally] a consumer, who adheres to the contract with little choice about the terms." BLACK'S LAW DICTIONARY 342 (8th ed. 2004).

²² Jankowich, *EULAw*, *supra* note 21, at 10, 13, 17–20 (citing Anarchy Online News and Community, <http://www.aoforge.com/newbie1.php3> (last visited Apr. 16, 2006)) (arguing that participants do not have the ability to negotiate for rights under the EULAs).

²³ See *Rules & Borders, Panel 3*, *supra* note 20, at 807–08, 826, 842–43 (containing suggestions by panelists, including Andrew Zaffron, Senior Vice President and General Counsel of Sony Online Entertainment, of EULA terms that could be found void due to public policy, such as "you violate some condition of the game, you turn over your first born," "[the proprietor] can shut the world down at any time [the proprietor] want[s]," and a term that has the effect of allowing the proprietor to remove a member of a protected class "because that person was a member of a protected class . . .").

²⁴ Traditionally, labor-based property theory proposes that the mixing of work with an object creates property:

Though the earth, and all inferior creatures, be common to all men, yet every man has a *property* in his own *person*: this no body has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*. It being by him removed from the common state nature hath placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men: for this *labour* being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

JOHN LOCKE, SECOND TREATISE OF GOVERNMENT 19 (C.B. Macpherson ed., Hackett Publ'g Co., Inc. 1980) (1689).

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money share a common component - real-world time.”²⁵ If enough users think they have a property right, courts may confront a need to protect those users’ expectations of obtaining benefits from their time and efforts.²⁶

Third, there are persuasive public policy arguments in favor of granting users property rights in virtual items. Public policy generally does not tolerate consensual restraints on alienation and, by extension, should not tolerate EULAs, which are essentially consensual agreements that prevent the formation of property rights.²⁷ Further, “[t]he United States is behind the curve in terms of recognizing and protecting virtual property rights,” because China, Taiwan, and South Korea have, or have attempted to, recognize those same rights.²⁸ The United States must adapt to compete in the virtual marketplace.²⁹

2. Virtual-World-Maker Recognition of User Property Rights in Virtual Worlds

At least one virtual-world-maker has provided its users with property rights over virtual items within its virtual world.³⁰ Linden Lab’s Second Life is a “virtual world entirely built and owned by its [r]esidents.”³¹ Second Life’s website boasts that users can “[m]ake real money in a virtual world.”³² Unlike the traditional EULA which other virtual-world-makers employ to remove their users’ property rights, “Linden Lab’s Terms of Service agreement recognizes [r]esidents’ right to retain full

²⁵ Jankowich, *Property & Democracy*, *supra* note 14, at 183.

²⁶ See Balkin, *supra* note 11, at 2067 (suggesting that as more players enter a virtual community, new players may “feel badly treated, and thus turn to the courts for protection of their virtual property.”).

²⁷ See Fairfield, *supra* note 12, at 1083–84 (citing Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L.J. 1, 12 (2000); Glen O. Robinson, *Personal Property Servitudes*, 71 U. CHI. L. REV. 1449, 1480 (2004)) (suggesting that since consensual agreements that alienate property rights are generally impermissible, EULAs that restrict property rights in virtual worlds also should not be allowed).

²⁸ See Fairfield, *supra* note 12, at 1084.

²⁹ See *id.* at 1089 (arguing that “[t]he United States should . . . [adopt] moderate protections for virtual property, in order to remain competitive . . .”).

³⁰ Second Life, IP Rights, http://secondlife.com/whatis/ip_rights.php (last visited March 9, 2008).

³¹ Second Life, What is Second Life?, <http://secondlife.com/whatis/> (last visited March 9, 2008).

³² Second Life, The Marketplace, <http://secondlife.com/whatis/marketplace.php> (last visited March 9, 2008).

intellectual property protection for the digital content they create in Second Life.”³³ Rather than seeing users’ property rights as a disruption to its virtual world, Linden Lab has used its permissive property rights rules to draw a distinction between Second Life and its competitors.³⁴ Linden Labs allows users to convert real dollars into Second Life currency, known as Linden Dollars (L\$).³⁵ Linden Dollars are even controlled by market forces: rates fluctuate regularly, but have recently been holding steady at approximately 270 L\$ to one U.S. dollar.³⁶

III. TRANSACTIONS IN VIRTUAL ITEMS

A. *Finding Reasonable Expectations of Virtual World Users*

Like agreements made in real life between people, agreements made online between their virtual alter egos should be enforceable against the parties. Although Seventh Circuit U.S. Court of Appeals Judge Richard Posner suggested during a Second Life in-game interview that a game maker might “codif[y] the customs [of avatars], as laws,”³⁷ currently virtual worlds are governed heavily by the game makers whose relative power vis-à-vis users “will inevitably [lead users to] seek redress in the real world where their power may be limited compared to corporate proprietors, but is not completely absent as in the virtual realms.”³⁸

³³ Second Life, IP Rights, *supra* note 30.

³⁴ See *Rules & Borders, Panel 3, supra* note 20, at 809, 821 (including a statement by Vice President of Product Development for Linden Research, Cory Ondrejka, that distinguishes the property rights in Second Life from those that are lacking from other games: “our EULA fails to take IP rights away from our users.”).

³⁵ See Second Life, Economy, <http://secondlife.com/whatis/economy.php> (last visited March 9, 2008) (stating that Linden Dollars can “be bought and sold . . . for real currency.”).

³⁶ See Second Life, LindeX Market Data, <http://secondlife.com/whatis/economy-market.php> (last visited March 9, 2008) (providing data on recent Linden Dollar exchange rates).

³⁷ The Second Life of Judge Richard A. Posner, *supra* note 8. Judge Posner also stated: “[W]ith real money being invested in virtual worlds, there need [sic] to be law-like rules to resolve disputes, protect property rights, enforce contracts, protect intellectual property and so forth. I assume without knowing that Linden is the supreme ruler of your world.” *Id.*

³⁸ Jankowich, *Property & Democracy, supra* note 14, at 185. *But see* Maxwell O. Chibundu, *Law in Development: On Tapping, Gourding, and Serving Palm-Wine*, 29 CASE W. RES. J. INT’L L. 167, 195 (1997) (asserting that “in

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The law of contracts generally enforces the reasonable expectations of the parties to the contract:³⁹ “The [m]ain [p]urpose of [c]ontract [l]aw [i]s the [r]ealization of [r]easonable [e]xpectations [i]nduced by [p]romises.”⁴⁰ Therefore, the normal damages for a breach of contract will be the “benefit of [the] bargain.”⁴¹ As the parties’ expectations change with each type of transaction, the damages that occur for breach of contract will change and, likewise, the rules that govern that transaction will change to meet those expectations.⁴²

Because contract law should reflect the expectations of the parties, it is important to actually ascertain what those expectations actually are.⁴³ One commentator has proposed that

instrumentalist terms[,] [l]aw functions to promote and perpetuate pre-existing power relationships . . .”).

³⁹ *Hays v. Pacific Indem. Group*, 8 Cal. App. 3d 158, 162–63 (Cal. Ct. App. 1970) (“The concept that a contract is to be interpreted in the light of the parties’ reasonable expectations lies deep in contract law.” (quoting Matthew O. Tobriner & Joseph R. Grodin, *The Individual and the Public Service Enterprise in the New Industrial State*, 55 CAL. L. REV. 1247, 1273 (1967))); Robert H. Jerry, II, *Insurance, Contract, and the Doctrine of Reasonable Expectations*, 5 CONN. INS. L.J. 21, 23 (1998) (“A fundamental purpose of contract law is protecting the expectations of contracting parties.”). *See also* Lawrence Kalevitch, *Contract, Will & Social Practice*, 3 J.L. & POL’Y 379, 380 (1995) (“A liberal theory of contract aims at meeting party expectations.”); Menachem Mautner, *Contract, Culture, Compulsion, or: What Is So Problematic in the Application of Objective Standards in Contract Law?*, 3 THEORETICAL INQUIRIES IN LAW 545, 559 (2002) (“[I]t is no wonder that rules directed at the protection of reasonable expectations arose within the realm of contract law doctrine.”).

⁴⁰ ARTHUR LINTON CORBIN, CORBIN ON CONTRACTS §1.1, at 2 (Joseph M. Perillo ed., West Publ’g Co. 1993) (1963).

⁴¹ RESTATEMENT (SECOND) OF CONTRACTS § 347 (1979); *see also* E. ALLAN FARNSWORTH, FARNSWORTH ON CONTRACTS §12.9, at 212 (3d ed., Aspen Publishers 2004) (stating that the general value of expectation damages equals the “loss in value + other loss – cost avoided – loss avoided”) (emphasis omitted).

⁴² *See* Melvin Aron Eisenberg, *The Bargain Principle and Its Limits*, 95 HARV. L. REV. 741, 788–89, 794–97 (1982) (describing two different contract expectations resulting in the application of different rules and remedies).

⁴³ Philosophers have stressed the importance of empirical research to human knowledge:

Let us then suppose the mind to be, as we say, white paper, void of all characters, without any ideas ; how comes it to be furnished? Whence comes it by that vast store, which the busy and boundless fancy of man has painted on it with an almost endless variety? Whence has it all the materials of reason and knowledge? To this I answer, in one word, [f]rom experience: in that all our knowledge is founded, and from that it ultimately derives itself.

“parties to an electronic contract appear to conduct themselves[,] and expect others to conduct themselves[,] in the same manner as they have under traditional rules.”⁴⁴ However, this is not the case in at least one virtual world. In order to determine the true expectations of virtual world users, the author interviewed 101 users in Second Life from November 2006 to March 2007.⁴⁵

Users were asked about their expectations regarding transferring rights upon sale,⁴⁶ breach of contract,⁴⁷ and revoking acceptance.⁴⁸ Additionally, the author observed the virtual world for merchants⁴⁹ and international transactions.⁵⁰ This section

JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 59 (38th ed., William Tegg 1894) (1689).

⁴⁴ Donnie L. Kidd, Jr. & William H. Daughtrey, Jr., *Adapting Contract Law to Accommodate Electronic Contracts: Overview and Suggestions*, 26 RUTGERS COMPUTER & TECH. L.J. 215, 239 (2000).

⁴⁵ The author randomly selected interview subjects from the Second Life virtual world by simply walking around and engaging users in conversation. Second Life was the ideal virtual world in which to conduct this research, because it has millions of users and recognizes their property rights in virtual items. Adam Pasick a.k.a. Adam Reuters, *Europe Takes Lead in Second Life Users*, SECOND LIFE NEWS CENTER, Feb. 9, 2007, <http://secondlife.reuters.com/stories/2007/02/09/europe-takes-lead-in-second-life-users> (stating that Second Life has approximately two million users). *See supra* Part II.B.2 (discussing how Second Life recognizes the property rights of its users). Additionally, it is free to enter Second Life and begin trading. Second Life, <http://www.secondlife.com> (last visited March 9, 2008) (stating that a Second Life “[m]embership is [f]ree”). Subjects were not paid for their responses. Subjects were instructed to answer based on their expectations, rather than what they wanted the rule to be or what they preferred when carrying out their own transactions. *See, e.g.*, Internet Interview with Steve Crowley, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology). Subjects were told that the author was conducting interviews for law school research and they agreed to participate. *See, e.g.*, Internet Interview with Steve Crowley, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology). Subjects were then asked questions about their expectations when engaging in transactions in virtual items. The limits of interviewing in a virtual world, including internet crashes and computer freezes, as well as limited time on the part of some interview subjects, made asking every question of every subject impossible. Not every subject answered every question that was asked. Percentages of respondents presented below are based on the number of subjects who responded to each particular question rather than the total number of subjects interviewed. *See infra* Part VI (presenting the results of the interviews in chart form).

⁴⁶ *See* discussion *infra* Part III.B.2 & Part III.B.3.

⁴⁷ *See* discussion *infra* Part III.C.

⁴⁸ *See* discussion *infra* Part III.D.2.

⁴⁹ *See* discussion *infra* Part III.E.

⁵⁰ *See* discussion *infra* Part III.F.

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presents the findings of those interviews and compares the expectations of these virtual world users to various default “real world” contract law systems.

B. Licenses of Virtual Items

It is not at all clear what form of contract law should govern transactions in virtual items.⁵¹ This section will demonstrate that transactions in virtual items are not sales of goods, but, rather, licenses of intellectual property, and that this theory is confirmed by the expectations of virtual world users.

1. Virtual Items Are Not “Goods” Under U.C.C. Article 2

Items available for purchase and transfer in virtual worlds are often referred to by commentators as “virtual goods.”⁵² The use of the term “goods” invokes the special laws governing the sales of goods contained in Article 2 of the Uniform Commercial Code (Article 2). Article 2 “applies to transactions in goods.”⁵³ Article 2 defines “[g]oods” as “both existing and identified before any interest in them may pass.”⁵⁴ Although some courts have applied prior versions of Article 2 to software packaged in a physical form,⁵⁵ courts and commentators alike have struggled to apply

⁵¹ A search for cases addressing contract rules for transactions in virtual items yields no relevant results. The lack of results is likely due to the fact that the individual cost of any given virtual item is often well below any price worth bringing a lawsuit over, as well as to user ignorance as to whether or not law outside the virtual world is applicable to virtual world transactions. As virtual world property becomes more valuable, such lawsuits will probably appear. However, although the cost of individual items is not high, the property rights to item concepts can be valuable. A copyright dispute over a user-designed software code that allows avatars to perform sex acts has led to the first reported real-life legal battle between two avatars. Phil Davis, *Virtual Sex Software Spawns Lawsuit*, MSNBC, Aug. 10, 2007, <http://www.msnbc.msn.com/id/20214184>. Additionally, the price of real estate in Second Life is high enough to have produced at least one real-life millionaire. Tiffany, *supra* note 7.

⁵² See, e.g., Julian Dibbell, *Dragon Slayers or Tax Evaders?*, LEGAL AFF., Jan./Feb. 2006, at 47, 49; Caroline Bradley & A. Michael Froomkin, *Virtual Worlds, Real Rules*, 49 N.Y.L. SCH. L. REV. 103, 132 (2004–2005); Ethan Katsh, *Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes through Code*, 49 N.Y.L. SCH. L. REV. 271, 288 (2004–2005); Jankowich, *Property & Democracy*, *supra* note 14, at 188.

⁵³ U.C.C. § 2-102 (2007).

⁵⁴ U.C.C. § 2-105(1) (2007).

⁵⁵ See, e.g., *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447, 1450 (7th Cir. 1996) (applying the U.C.C. to a software program that provided access to a

Article 2 properly to transactions that include no physical manifestation.⁵⁶

Items purchased and transferred in virtual worlds are in some sense purely virtual property. Not only are the items themselves completely contained within a virtual world, but some of the virtual worlds themselves are accessible through a website without buying any physical software package.⁵⁷ On the other hand, the names, appearances, and uses of virtual items are similar to their real world equivalents. For example, consider a sword in a virtual world. Very few people would confuse a real world sword with a virtual world sword. The two “swords” might look similar and both be used for the same purpose in their respective worlds (i.e., serving as a weapon). However, the virtual sword is not a “good” as that term is used in Article 2 because it is not moveable at the time of identification⁵⁸ in a physical sense.⁵⁹

2. Virtual Item Transactions Are Not “Sales” Under U.C.C. Article 2

Even if virtual items were “goods” under Article 2, their purchase may not qualify as a “sale.” “A ‘sale’ consists in the

commercial database); *Wachter Mgmt. Co. v. Dexter & Chaney, Inc.*, 144 P.3d 747, 750–51 (Kan. 2006) (applying the U.C.C. to services that were necessitated by the purchase of software).

⁵⁶ See, e.g., *Arbitron, Inc. v. Tralyn Broad. Inc.*, 400 F.3d 130, 138 n.2 (2d Cir. 2005) (“In many states, it is not clear whether ‘license’ agreements . . . for the right to use software [or other intangibles] . . . , are contracts for the sale of ‘goods’ and therefore within the U.C.C.’s purview.”); *Specht v. Netscape Commc’ns Corp.*, 306 F.3d 17, 29 n.13 (2d Cir. 2002) (“It is not obvious . . . that U.C.C. Article 2 (‘sales of goods’) applies to the licensing of software that is downloadable from the Internet.”); *Berthold Types Ltd. v. Adobe Sys. Inc.*, 101 F. Supp.2d 697, 698 (N.D. Ill. 2000) (“A transaction involving a computer program can involve an Article 2 sale of goods, . . . but an agreement that does not involve a transfer of title cannot be an Article 2 sale in Illinois.” (citing *Analysts Int’l Corp. v. Recycled Paper Prods. Inc.*, No. 85 C 8637, 1987 WL 12917 at *2)); Andrew Rodau, *Computer Software: Does Article 2 of the Uniform Commercial Code Apply?*, 35 EMORY L.J. 853 *passim* (1986) (discussing the possible application of Article 2 to intangible computer software).

⁵⁷ See, e.g., Linden Lab, Makers of Second Life, <http://lindenlab.com> (follow “Second Life”) (last visited March 9, 2008) (stating that a basic account, which allows users to participate in every aspect of the game, is free); Games, Free MMORPGs, http://www.onrpg.com/games_categories/free.html (last visited March 9, 2008) (listing numerous free massively multiplayer online role-playing games (MMORPGs)).

⁵⁸ U.C.C. § 2-105 (2007).

⁵⁹ *Id.*

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passing of title from the seller to the buyer for a price”⁶⁰ The seller of a virtual item does not always grant full title to the buyer. In fact, the vast majority of virtual world users do not expect the buyer to acquire full rights in the item at purchase: of the users interviewed, seventy-two percent expected the seller to retain some rights over an item when “selling” it.⁶¹ One user noted that the seller “has the right to retain copies of the product in all cases”⁶²

3. Virtual World Users Expect Licenses, Not Sales

In contrast to a sale, a license “allocates rights in intangibles such as software, databases, and other forms of information.”⁶³ A license is a type of contract.⁶⁴ While a sale “center[s] on qualitative warranties or remedy limitations . . . , [a license] focuses instead on delineating the *scope* of permitted use of the licensed subject matter.”⁶⁵ Therefore, the license contains “NO assurance that the licensee can actually use the subject matter without infringing another’s rights.”⁶⁶ Although there is disagreement over what a license should grant the licensee in the absence of any additional promises or warranties,⁶⁷ “[a] doctrine

⁶⁰ U.C.C. § 2-106(1) (2007).

⁶¹ See *infra* Part VI, Chart 5. Under a Chi Squared statistical test, this result differs significantly from the expected value that would have resulted if users had answered randomly. Michael H. Passman, Collected Interviews of Virtual World Users app. 3 (November 3, 2006) (unpublished collection of interviews, on file with Albany Law Journal of Science and Technology).

⁶² Interview with Carigorp Matzerath, www.secondlife.com (Nov. 3, 2006) (on file with Albany Law, Journal of Science and Technology).

⁶³ Ray Nimmer, *A Modern Template for Discussion*, 2 DEPAUL BUS. & COM. L.J. 623, 623 (2004).

⁶⁴ *Id.*

⁶⁵ *Id.* at 627.

⁶⁶ *Id.*

⁶⁷ *Id.* at 628.

Two conflicting conceptions about the nature of a license thus exist. In one, there is no affirmative assurance to the licensee that it can use the licensed subject matter. The license is a mere, non-transferable covenant not to sue. In the other, a licensee is presumed to have a *right* to use the information unless that right or the presumption is excluded by the agreement. These differing perspectives not only shape the development of law in this field, but they also have an impact on commercial practice. In formulating a license transaction or in dealing with licensed subject matter as an asset, the parties need to be clear whether they are dealing from the same basic understanding of what is a license or, at least, that they recognize the different views that might govern even though both are using the same word.

of *caveat licensee* prevails for patent, copyright, trademark, and trade secret licenses.”⁶⁸ Licenses also differ significantly from sales of goods in that the licensed product “can be transferred and simultaneously retained by the transferor.”⁶⁹ Because a license limits the rights of its buyer, the buyer of a license should not expect the same level of complete ownership that a buyer of goods should expect.⁷⁰ The buyer of a software license, for instance, is generally restricted from distributing more copies of the software even if the buyer owned every copy of the software (which is highly unlikely to occur).⁷¹ Finally, use (or misuse) of licensed software is an issue of strict liability:

Th[e] result does not depend on issues about good faith or the like, but as with any infringement claim, liability arises simply because the uses are not authorized and fall within the scope of the non-transferred intellectual property rights [A] transferee receives no rights unless the transfer was authorized by the licensor or by the applicable property rights statute.⁷²

The three major interests in items (called permissions in Second Life) at issue in virtual world transactions are *copy*, *resell/give away*, and *modify*.⁷³ *Copy* is the ability to replicate

Id. (citing Lorin Brennan, *Why Article 2 Cannot Apply to Software Transactions*, PLI PATENTS, COPYRIGHTS, TRADEMARKS, & LITERARY PROPERTY COURSE HANDBOOK SERIES (Feb.-Mar. 2001); *In re CFLC, Inc.*, 89 F.3d 673, 679 (9th Cir. 1996); *In re Catapult Entm't, Inc.*, 165 F.3d 747 (9th Cir. 1999); *PPG Indus., Inc. v. Kelley Co.*, 465 F.2d 1303, 1306 (7th Cir. 1972); *Gilson v. Republic of Ireland*, 787 F.2d 655, 658 (D.C. Cir. 1986); *Stenograph Corp. v. Fulkerson*, 972 F.2d 726, 729 n.2 (7th Cir. 1992); *Inst. Pasteur v. Cambridge Biotech Corp.*, 104 F.3d 489 (1st Cir. 1997)).

⁶⁸ Ray Nimmer, *supra* note 63, at 628.

⁶⁹ *Id.* at 629–30.

⁷⁰ *See id.* (stating that transactions involving licenses are “presumed to be limited conveyances, rather than comprehensive transfers”).

⁷¹ *See id.* at 631 (explaining that ownership of a copy of software gives the owner “only limited rights to use the information and that copy; the copyright or other rights owner retains control of most uses of the information that relate to intellectual property rights” (citing 17 U.S.C. §§ 109, 117 (2006))).

⁷² *Id.* at 657 (citing *Microsoft Corp. v. Compuserve Distributions, Inc.*, 115 F. Supp. 2d 800 (E.D. Mich. 2000)) (contrasting transactions involving licenses and “transactions in goods, [in which] a buyer in good faith takes free of preexisting ownership claims even if the sale to it was not authorized”).

⁷³ Second Life Inworld Help, Permissions, <http://secondlife.com/app/help/building/permissions.php> (last visited March 9, 2008) (explaining copy, resell/give-away, and modify). *See also* Internet Interview with Stormy Roentgen, Second Life User, at www.secondlife.com (Sept. 23, 2007) (on file with Albany Law Journal of Science and Technology) (containing an avatar’s statement that he never gives or expects to receive “copy/mod/transfer” rights, which constitute full rights).

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the item.⁷⁴ *Resell/give-away* is the ability to give the item to another individual.⁷⁵ By restricting the copy and transfer rights, a seller makes sure potential buyers purchase only from the original creator of the item.⁷⁶ *Modify* is the ability to change the item from its original state.⁷⁷ By restricting the right to modify, sellers make sure that the products that carry their name remain unchanged by others.⁷⁸ In large part, the expectation of the seller's preservation of rights in virtual worlds is based on the fact that the items are parts of computer programs that can be easily copied when permissions are granted. One user explained that "[it is] too easy for rip offs [sic] to happen in this type of format. If I get copy and transfer, I can keep the copy and sell it to others unauthorized [sic]."⁷⁹ A number of users stated that the extent to which a buyer acquires rights is dependent on what the seller is willing to give.⁸⁰ Transactions in virtual items are

⁷⁴ See Second Life Inworld Help, Permissions, <http://secondlife.com/app/help/building/permissions.php> (last visited March 9, 2008) (stating that by turning on an object's copy permissions "the new owner can make infinite copies of the object . . .").

⁷⁵ See *id.* (stating that turning on an object's resell/give away permissions "will enable the next owner to hand the item to others, or sell it.").

⁷⁶ See, e.g., Internet Interview with Alexandria Rosewood, Second Life User, at www.secondlife.com (Nov. 5, 2006) (on file with Albany Law Journal of Science and Technology) (suggesting that it is easy to copy and resell an item when permissions are not restricted); Internet Interview with Chocolata Oxberger, Second Life User, at www.secondlife.com (Nov. 8 2006) (on file with Albany Law Journal of Science and Technology) (stating that giving these rights allows others to take ideas and creations away from the creator).

⁷⁷ See Second Life Inworld Help, *supra* note 74 (stating that turning on an object's modify permissions "will allow the next owner to edit the item, stretch it, open it, pull it apart, unlink it and so on.").

⁷⁸ See Internet Interview with Kerry Genji, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology) (stating that some objects have no modify permissions, so users cannot change the functionality); Internet Interview with Quex Serge, Second Life User, at <http://www.secondlife.com> (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology) (suggesting that restricting modify permissions prevents buyer from copying and reselling the object for a profit).

⁷⁹ Internet Interview with Ren Austinmer, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology).

⁸⁰ See, e.g., Internet Interview with Dixii Lovell, Second Life User, at www.secondlife.com (Nov. 22, 2006) (on file with Albany Law Journal of Science and Technology) (stating that the seller decides what permission(s) to give the buyer); Internet Interview with Moni Lime, Second Life User, at www.secondlife.com (Nov. 22, 2006) (on file with Albany Law Journal of Science and Technology) (implying that, as a seller, she sets the permissions).

licenses, not sales.

C. Breach of Contract

Transactions in virtual items do not neatly fit into the normal standards of breach for either goods or non-goods contracts. While in established contract law, breach hinges on performance and conforming to the contract,⁸¹ many virtual world users expect to receive something different from that for which they paid.⁸² Further, virtual world users are split on a proper remedy for partial performance.⁸³

1. Standards for Breach of Contract Under Common Law and Article 2

The standard for breach is different for contracts for the sale of goods from contracts for non-goods. In a contract for non-goods, “it is a condition of each party’s remaining duties to render performances to be exchanged under an exchange of promises that there be no uncured material failure by the other party to render any such performance due at an earlier time.”⁸⁴ The following factors are significant in determining if a failure is material:

the extent to which the injured party will be deprived of the benefit which he reasonably expected;

(b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;

(c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;

(d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;

(e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.⁸⁵

A material failure by one party is a significant factor in

⁸¹ See *infra* Part III.C.1.

⁸² See *infra* Part III.C.2.

⁸³ *Id.*

⁸⁴ RESTATEMENT (SECOND) OF CONTRACTS § 237 (1981).

⁸⁵ RESTATEMENT (SECOND) OF CONTRACTS § 241 (1981).

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creating a total breach.⁸⁶ Therefore, while a material breach is not automatically a total breach, the former often begets the later.⁸⁷

In a contract for a sale of goods, “if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may[] (a) reject the whole; (b) accept the whole; or (c) accept any commercial unit or units and reject the rest.”⁸⁸ Before the Uniform Commercial Code (U.C.C.) was promulgated, courts had established that “[t]here is no room in commercial contracts for the doctrine of substantial performance.”⁸⁹ While Article 2 somewhat tempers this strict rule,⁹⁰ it is still easier to establish breach in a sale of goods transaction than in a non-goods transaction.

2. Breach Expectations Of Virtual World Users

In the interviews, thirty-six percent of users stated that buyers should expect to receive extra or different features from those the buyers thought they would receive.⁹¹ In a world where there is no way to tell who a seller really is, or sometimes even to find someone again after an initial meeting, it is not surprising that over one-third of users expected purchased items to be a little different than represented to buyers.⁹²

Virtual world users are similarly split on whether or not a buyer has the choice to invoke the Article 2 breach rules in the case of a partial shipment. Fifty-four percent of users expected buyers to be able to cancel the whole deal if they did not receive every item for which they had contracted.⁹³ Forty-one percent of

⁸⁶ *Id.* § 242(a) (1981).

⁸⁷ *See, e.g.,* *Milner Hotels, Inc. v. Norfolk & W. Ry. Co.*, 822 F.Supp. 341, 346–47 (S.D.W.Va. 1993), *aff’d*, 19 F.3d 1429 (4th Cir. 1994).

⁸⁸ U.C.C. § 2-601 (amended 2003) (2007).

⁸⁹ *Mitsubishi Goshi Kaisha v. J. Aron & Co.*, 16 F.2d 185, 186 (2d Cir. 1926).

⁹⁰ *See* U.C.C. §§ 2-508, 2-608(1), 2-612 (2007).

⁹¹ *See infra* Chart 2 (demonstrating that sixty-three percent of users thought that a buyer of a virtual item should not expect to receive extra or different features from those the buyer thought he was getting and one percent gave a different answer). This result differs significantly under a Chi Squared statistical test from the expected value if users answered randomly. *Collected Interviews of Virtual World Users*, app. 3. Michael H. Passman, *Collected Interviews of Virtual World Users* app. 3 (Nov. 6, 2006) (unpublished collection of interviews, on file with Albany Law Journal of Science. and Technology).

⁹² *See id.*

⁹³ *See infra* Chart 4. This result differs significantly under a Chi Squared statistical test from the expected value if users answered randomly. Michael H.

users did not expect a buyer to have the power to cancel the whole deal under such circumstances.⁹⁴ Some suggested that they expected buyers to pay for what they actually received.⁹⁵

Because such a significant number of virtual world users expect that purchases will sometimes go differently than agreed upon, the standards governing breach should be relaxed for transactions in virtual items. Certainly, this is not the market to apply the strict Article 2 rules. Even the rule of materiality applicable to non-goods contracts seems too strict where a large number of persons in the market think that a buyer's expectations will often not be met.

D. Revoking Acceptance

The standard enunciated in Article 2 for revoking acceptance is similarly inapplicable to transactions of virtual items. Most virtual world users do not expect returns on demand and many expect a market pervaded by *caveat emptor*.⁹⁶

1. The Article 2 Approach to Revoking Acceptance

Article 2 follows the approach that a buyer may revoke acceptance where the seller's nonconformity "substantially impairs"⁹⁷ the value of the goods: "the question is whether the non-conformity is such as will in fact cause a substantial impairment of value to the buyer though the seller had no advance knowledge as to the buyer's particular circumstances."⁹⁸ Article 2 also requires that "[r]evocation of acceptance must occur within a reasonable time after the buyer discovers or should have

Passman, Collected Interviews of Virtual World Users, app. 3 (unpublished collection of interviews, on file with Albany Law Journal of Science and Technology).

⁹⁴ See *infra* Chart 4; Michael H. Passman, Collected Interviews of Virtual World Users, app. 3 (unpublished collection of interviews, on file with Albany Law Journal of Science and Technology).

⁹⁵ See, e.g., Internet Interview with Kiriel Soleil, Second Life User, at www.secondlife.com (Nov. 8, 2006) ("I have one part [of it], so some money would have to be exchanged. They can't be sure you deleted their product, so it would not be entirely fair [to cancel the whole deal]") (on file with Albany Law Journal of Science and Technology).

⁹⁶ See discussion *infra* Part III.D.2. BLACK'S LAW DICTIONARY 236 (8th ed. 2004) (defining *caveat emptor* as "[a] doctrine holding that purchasers buy at their own risk").

⁹⁷ U.C.C. § 2-608(1) (amended 2003) (2007).

⁹⁸ U.C.C. § 2-608 cmt. 2 (amended 2003) (2007).

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discovered the ground for it.”⁹⁹ The U.C.C. provides that “[w]hether a time for taking an action . . . is reasonable depends on the nature, purpose, and circumstances of the action.”¹⁰⁰

2. Revocation of Acceptance Expectations of Virtual World Users

When asked if they generally expected that a buyer could return an item, only thirty-seven percent of virtual world users answered in the affirmative.¹⁰¹ Most expected that a return would not occur or would occur only in certain circumstances.¹⁰² One user pointed out that in a virtual world, “[m]any items are non refundable [*sic*], since [in cases where] they can be copied or modified . . . someone can make a copy and then demand a refund, getting it for free.”¹⁰³

When asked if they expected that buyers could return items that came bundled with extra features or features different from those the buyer thought they would receive, thirty-eight percent of virtual users said no.¹⁰⁴ Thirty-eight percent of users expected that buyers could make a return if they accepted items with extra or different features than they thought they would receive.¹⁰⁵ Twenty-three percent of users expected that a buyer could return an item that came with extra or different features only in some situations.¹⁰⁶ A few users pointed out that an extra or different feature may or may not be negative and a buyer should only expect a return where the extra or different features

⁹⁹ U.C.C. § 2-608(2) (amended 2003) (2007).

¹⁰⁰ U.C.C. § 1-205(a) (2007).

¹⁰¹ See *infra* Chart 1. This result differs significantly under a Chi Squared statistical test from the expected value if users answered randomly. Michael H. Passman, Collected Interviews of Virtual World Users, app. 3 (unpublished collection of interviews, on file with Albany Law Journal of Science and Technology).

¹⁰² See *infra* Chart 1. Michael H. Passman, Collected Interviews of Virtual World Users, app. 3 (unpublished collection of interviews, on file with Albany Law Journal of Science and Technology).

¹⁰³ Internet Interview with Marcos Castro, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology).

¹⁰⁴ See *infra* Chart 3. This result does not differ significantly under a Chi Squared statistical test from the expected value if users answered randomly. However, it was close to differing significantly. Michael H. Passman, Collected Interviews of Virtual World Users, app. 3 (unpublished collection of interviews, on file with Albany Law Journal of Science and Technology).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

negatively affect the buyer.¹⁰⁷ One user described the system as “Caveat Emptor.”¹⁰⁸

When asked how much time they expected a buyer should have to make a return, virtual world users’ answers varied widely from “instantly”¹⁰⁹ to thirty days.¹¹⁰ A number of users spoke in terms of hours rather than days, weeks, or months.¹¹¹

Like buyers in Article 2 sales of goods, most virtual world users

¹⁰⁷ Internet Interview with Andrew Wirtanen, Second Life User, at www.secondlife.com (Nov. 13, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Aster Jael, Second Life User, at www.secondlife.com (Nov. 13, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Bruno Ziskey, Second Life User, at www.secondlife.com (Nov. 6, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Doozie Commerce, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Evangeline Wind, Second Life User, at www.secondlife.com (Nov. 6, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Kerry Genji, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with LightBlade Daikon, Second Life User, at www.secondlife.com (Nov. 16, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Stormy Roentgen, Second Life User, www.secondlife.com (Nov. 16, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Saiyge Lotus, Second Life User, at www.secondlife.com (Nov. 14, 2006) (on file with Albany Law Journal of Science and Technology); Internet Interview with Soriana Lycia, Second Life User, at www.secondlife.com (Nov. 21, 2006) (on file with Albany Law Journal of Science and Technology).

¹⁰⁸ Internet Interview with Mannly Manen, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology). *See also* Interview with Mooselot Oxberger, Second Life User, at www.secondlife.com (Nov. 8, 2006) (on file with Albany Law Journal of Science and Technology).

¹⁰⁹ Interview with MikalDefoe Juneau, Second Life User, at www.secondlife.com (Nov. 8, 2006) (on file with Albany Law Journal of Science and Technology).

¹¹⁰ Interview with Shirl Yost, Second Life Virtual World User, www.secondlife.com (Nov. 5, 2006) (on file with Albany Law Journal of Science and Technology); Interview with Evangeline Wind, Second Life Virtual World User, www.secondlife.com (Nov. 6, 2006) (on file with Albany Law Journal of Science and Technology); Interview with Bina Holder, Second Life Virtual World User, www.secondlife.com (Nov. 8, 2006) (on file with Albany Law Journal of Science and Technology); Interview with Soriana Lycia, Second Life Virtual World User, www.secondlife.com (Nov. 8, 2006) (on file with Albany Law Journal of Science and Technology).

¹¹¹ *See, e.g.*, Interview with Steve Crowley, Second Life Virtual World User, www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology); Interview with Caresse Marten, Second Life Virtual World User, www.secondlife.com (Nov. 5, 2006) (on file with Albany Law Journal of Science and Technology).

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do not expect unfettered returns.¹¹² However, probably in part because virtual world users do not expect buyers to get exactly what they bargained for, a significant number of users do not expect the buyer to ever be able to revoke acceptance. Whether or not the buyer receives something of less value than bargained for does not create an expectation of a right to return, although the receipt of such an item would trigger such a right under Article 2. Additionally, the reasonable time to revoke acceptance in high-speed virtual worlds is viewed to be much shorter than the reasonable time to revoke that is recognized outside of virtual worlds.¹¹³

E. Virtual Merchants

Article 2 imposes special rules where the seller of goods is a “merchant.” The drafters of Article 2 assumed that there are some people with an inherent knowledge-based advantage in the marketplace for goods.¹¹⁴ People expect that one “who . . . by his occupation holds himself out as having knowledge or skill peculiar to the practices” should be familiar with these special rules of contracts.¹¹⁵

Application of these rules to transactions in virtual items could be easy. Virtual worlds also contain persons with special knowledge of the marketplace.¹¹⁶ Sometimes they are as easily identifiable as the nametags that are as ubiquitous in real stores.¹¹⁷ Some virtual shops display a complex management structure involving a designer/owner, manager, and salespersons.¹¹⁸ Shop owners actually employ employees for pay in a manner similar to employment outside of virtual worlds.¹¹⁹

¹¹² See U.C.C. §§ 2-508(1), 2-608(1), (2), (3) (amended 2003) (2007).

¹¹³ See *Willmar Cookie Co. v. Pippin Pecan Co.*, 357 N.W.2d 111, 115 (Minn. Ct. App. 1984) (stating that “[w]hat constitutes a ‘reasonable time’ is a jury question and depends on the facts and circumstances of the case.”).

¹¹⁴ U.C.C. §§ 2-104(1), 2-104 cmt. 2 (amended 2003) (2007); see also U.C.C. §§ 2-201(2), 2-205, 2-209(2) (adding special rules for merchants as a class with superior knowledge).

¹¹⁵ U.C.C. § 2-104, cmt. 2 (amended 2003) (2007).

¹¹⁶ See Internet Interview with Marcos Castro, *supra* note 103 (discussing how items are purchased in a virtual world, similar to real world transactions).

¹¹⁷ *Id.* (stating that salespersons are identifiable “by the tags over their heads”).

¹¹⁸ Internet Interview with Khaja Chambers, Second Life User, at www.secondlife.com (Nov. 3, 2006) (on file with Albany Law Journal of Science and Technology).

¹¹⁹ Internet Interview with Denim Dahlgren, Second Life User, at

Companies with strong brands in the real world marketplace, “including Sony BMG Music Entertainment, Sun Microsystems, Nissan, Adidas/Reebok, Toyota and Starwood Hotels,”¹²⁰ have entered the virtual world marketplace.¹²¹ There is no reason to think these sellers are any less skilled than those operating in the real world marketplace; they have the same capacity to be just as knowledgeable about special contract rules as their real world counterparts.

F. *International Transactions in Virtual Items*

The special rules for international transactions in goods are not applicable to virtual goods. Whereas the CISG is meant for sophisticated parties engaging in transactions over a known international border,¹²² international transactions occur in virtual worlds between unsophisticated parties without the realization that they are engaging in a transaction with a foreign party.¹²³

1. The Scope and Purpose of the CISG

Article 2 is limited to the sale of goods within the United States. The Convention on Contracts for the International Sale of Goods (hereinafter “CISG”) “applies to contracts of sale of goods between parties whose places of business are in different States.”¹²⁴ At least one commentator has suggested that some so-called virtual goods might be considered “goods” for the purpose of the CISG: “the sale of software may fall under the Convention’s substantive sphere of application, although software is not a tangible good and as long as it is not custom-made or, even where it is standard software, as long as it is not

www.secondlife.com (Nov. 8, 2006) (on file with Albany Law Journal of Science and Technology) (discussing his recent employment as a virtual world bartender for a low wage).

¹²⁰ Siklos, *supra* note 7, at C1.

¹²¹ See Adam Reuters, *Second Life Development Shops Pull in Big Business*, REUTERS SECOND LIFE NEWS CENTER, (Nov. 22, 2006), <http://secondlife.reuters.com/stories/2006/11/22/second-life-development-shops-pull-in-big-business>.

¹²² *Infra* Part III.F.1.

¹²³ *Infra* Part III.F.2.

¹²⁴ UNITED NATIONS, COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) at lxiii (Peter Schlechtriem & Ingeborg Schwenzer eds., Oxford University Press 2d ed. 2005) (1998).

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extensively modified to fit the buyer's particular needs."¹²⁵ However, the CISG may nevertheless fail to cover items in virtual worlds because "transactions in these goods do not fall under [the CISG's definition of "sale"], since they are in the form of licenses, not sales."¹²⁶ The CISG also does not apply to sales of "goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use."¹²⁷ In that respect, the CISG "presumes the parties [to the contract] are somewhat knowledgeable of the customs and practices of international law."¹²⁸

2. International Transactions in Virtual Items Fall Outside the CISG

Virtual world users have no special knowledge of international law. It is difficult for virtual world users to even know that they are engaging in international transactions. There are no borders in a virtual world. Of the 101 users interviewed, only five users indicated that they were of a nationality other than the United States.¹²⁹ Because of the widespread availability of the Internet outside of the United States and the fact that Europe has more Second Life users than North America,¹³⁰ it is likely that many of the users interviewed were not from the United States.

International transactions probably happen constantly in

¹²⁵ Franco Ferrari, *Brief Remarks on Electronic Contracting and the United Nations Convention on Contracts for the International Sale of Goods (CISG)*, 6 THE VINDOBANA J. OF INT'L COM. L. & ARB. 289, 294 (2002).

¹²⁶ *Id.* at 296.

¹²⁷ UNITED NATIONS, COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG), *supra* note 124, at lxiii; *see also* Ferrari, *supra* note 125, at 296 (quoting from Art. 2(a) in the CISG).

¹²⁸ Kidd & Daughtrey, *supra* note 44, at 275.

¹²⁹ Interview with Marvaill Boyau, Second Life Virtual World User, www.secondlife.com (Nov. 5, 2006) (on file with Albany Law Journal of Science and Technology); Interview with Bina Holder, *supra* note 110; Interview with Shredder Reddevil, Second Life Virtual World User, www.secondlife.com (Nov. 16, 2006) (on file with Albany Law Journal of Science and Technology); Interview with Dixii Lovell, *supra* note 80; Interview with Lillian Hesse, Second Life Virtual User, www.secondlife.com (Nov. 5, 2006) (on file with Albany Law Journal of Science and Technology).

¹³⁰ Pasick a.k.a. Reuters, *supra* note 2; *see also* Adam Reuters, *UK to wait and see on virtual world taxes*, SECOND LIFE NEWS CENTER, Oct. 31, 2006, <http://secondlife.reuters.com/stories/2006/10/31/uk-to-wait-and-see-on-virtual-world-taxes> (stating that the United Kingdom has the highest number of Second Life users per capita).

virtual worlds without anyone knowing. Additionally, items in virtual worlds may be custom made.¹³¹ Arguably, almost all purchases of virtual items are for personal use.

Whereas the CISG abandons rigid rules by reliance on the strength of international custom and the presumption of sophistication of international traders, this reliance may not translate into a viable system of law to govern a vast subset of electronic contracts entered by everyday persons who have access to the entire world at their fingertips.¹³²

In contrast to the scenario envisioned by the CISG, international transactions in virtual worlds are often between unsophisticated parties, haphazardly executed, and may be dealing in custom-made items for personal use. The CISG should not apply to transactions in virtual items.

IV. PROPOSAL: A UNIFORM LAW FOR TRANSACTIONS IN VIRTUAL ITEMS

A. *Virtual World Transactions Need Real World Law*

When a transaction in virtual goods creates a dispute, some law or rule has to govern. For the same reasons that a EULA will not always prevent the creation of user property rights, game makers cannot support a vision of having “nearly absolute proprietary power. . . [and] a tendency toward arbitrary rulemaking and exclusion”¹³³ forever. Online Dispute Resolution has been praised for “mak[ing] it simpler and easier for players.”¹³⁴ One commentator has gone so far as to propose using computer software to resolve disputes, arguing that

[d]isagreements about facts. . . can frequently be prevented by systematic record keeping about such facts as when something was shipped or whether a payment was made. . . [and the] delivery of virtual goods in virtual worlds is today a problem that will be solved better by a software application than by an arbitration proceeding.¹³⁵

¹³¹ See, e.g., Interview with Khaju Chambers, Second Life Virtual User, www.secondlife.com (Nov 5, 2006) (on file with Albany L. J. of Sci & Tech.); Interview with Bina Holder, *supra* note 110; Interview with Alexandria Rosewood, *supra* note 76.

¹³² Kidd & Daughtrey, *supra* note 44, at 275.

¹³³ Jankowich, *Property & Democracy*, *supra* note 14, at 8.

¹³⁴ *Rules & Borders, Panel 3*, *supra* note 20, at 833.

¹³⁵ Ethan Katsh, *supra* note 52, at 288.

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However, given the power gap between virtual world makers and virtual world users, even in-game dispute resolution methodology will not permanently prevent users from eventually taking their disputes to the more neutral forum of a real world courthouse.¹³⁶

B. A Legislative Solution For Transactions in Virtual Items

A comprehensive legislative solution for transactions in virtual items can be made if the statute is fair, flexible, and narrow.

1. Fair Legislation

One potential problem with a legislative solution for transactions in virtual items is that the utter disparity in lobbying power between the “identifiable, small, and wealthy [game-makers]. . . seek[ing] legislative action. . . [and the users who are] a disorganized, inchoate, and dispersed majority”¹³⁷ may produce a one-sided and unfair statute.

The state legislatures’ recent foray into uniform Internet contract law with the proposed Uniform Computer Information Transactions Act (hereinafter “UCITA”) is revealing. UCITA was designed to “cover[] a wide range of topics including, but not limited to, standard software licenses, contracts for the custom development of computer programs, licenses to access online databases, website user agreements, and agreements for most Internet-based information.”¹³⁸ UCITA’s drafters presented it as a uniform law hoping all the states would pass the act.¹³⁹ It failed, however, to gain widespread acceptance and only two states adopted the act.¹⁴⁰

The states’ experience with UCITA does not prove that

¹³⁶ Jankowich, *Property & Democracy*, *supra* note 14, at 185.

¹³⁷ Fairfield, *supra* note 12, at 1092.

¹³⁸ Sandy T. Wu, *Uniform Computer Information Transactions Act: Failed to Appease its Opponents in Light of the Newly Adopted Amendments*, 33 Sw. U. L. REV. 307, 308 (2004).

¹³⁹ *See id.* at 312.

¹⁴⁰ *Id.* at 309–10 (“To date, only two states have adopted this Act — Virginia and Maryland. In fact, three states — Iowa, West Virginia, and North Carolina — have adopted ‘bomb-shelter’ laws to exempt their residents from UCITA provisions in other states.”); Hornbuckle, *supra* note 9, at 841 (“The Virginia and Maryland state legislatures have recently adopted UCITA. In 2001, UCITA failed to pass in seven states where it was introduced, including Arizona, Illinois, Maine, New Hampshire, New Jersey, Oregon, Texas and the District of Columbia.”).

consumer protection would be overwhelmed by organized industrial insiders.¹⁴¹ However, many consumer groups saw UCITA as “protect[ing] the interests of software publishers at the expense of consumer rights and expectations”¹⁴² and played an active role in preventing it from becoming law.¹⁴³

2. Flexible Legislation

Another potential obstacle to a legislative solution is that legislation may “unwisely . . . lump[] all virtual worlds into the same category.”¹⁴⁴ However, a legislature could draft a law that reflects virtual world user expectations while simultaneously remaining flexible enough to respect differences between virtual worlds.

Existing commercial law already incorporates examples of partially adaptable rules.¹⁴⁵ The treatment of a secured party’s duties under the Uniform Commercial Code when a debtor defaults provides a ready example of a statute strong enough to protect the parties but flexible enough to be practical. Although the U.C.C. generally allows its provisions to “be varied by agreement,”¹⁴⁶ the “legal system traditionally has looked with suspicion on agreements that limit the debtor’s rights and free the secured party of its duties.”¹⁴⁷ For that reason, contracting parties cannot waive some duties imposed on the secured party upon the debtor’s default.¹⁴⁸ At the same time, however, “[t]he parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties

¹⁴¹ See Hornbuckle, *supra* note 9, at 862–63 (stating that “the passage of UCITA in Maryland and Virginia . . . suggests that the amount of added consumer protections will vary according to the in state presence of software and online information companies.”).

¹⁴² Wu, *supra* note 138, at 318.

¹⁴³ *Id.* at 312, 318; Hornbuckle, *supra* note 9, at 851; Courtney Lytle Perry, *My Kingdom for a Horse: Reining in Runaway Legislation from Software to Spam*, 11 TEX. WESLEYAN L. REV. 523, 548 (2005).

¹⁴⁴ Balkin, *supra* note 11, at 2074.

¹⁴⁵ See U.C.C. § 1-103(a), cmt. 1 (amended 2003) (2007) (explaining that the Uniform Commercial Code was created to be flexible, providing for unforeseen situations which might arise in the future).

¹⁴⁶ U.C.C. § 1-102(3) (2002). U.C.C. §§ 1-102(1)–(2), 1-103 have been subsequently combined into U.C.C. § 1-103, adopting a more formalistic approach. See U.C.C. § 1-103 (amended 2003) (2007).

¹⁴⁷ U.C.C. § 9-602 cmt. 2 (amended 2003) (2007).

¹⁴⁸ See U.C.C. § 9-602 (amended 2003) (2007) (listing the rules a debtor is not permitted to waive from its rights and duties).

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of a secured party . . . if the standards are not manifestly unreasonable.”¹⁴⁹ This flexibility protects debtors while giving the parties room to negotiate a workable security agreement.¹⁵⁰

A law covering transactions in virtual items could be similarly crafted to place some inflexible duties on the buyer and seller while allowing the custom of their particular virtual world and the parties’ agreement to govern the standards with which to measure the fulfillment of those duties. By way of example, although “breach” would remain a basic contract concept in all virtual worlds, the standard for breach would be neither the traditional common law standard nor the Article 2 rule. Instead, the standard for breach would be informed by the general expectations held by users in the parties’ particular virtual world. Virtual worlds would have “merchants,” but the standard for who is a merchant would depend on the sophistication of the virtual world and its users.

3. Narrow Legislation

Any legislation to codify a law for transactions in virtual items will have to avoid “[p]utting the cart before the horse”¹⁵¹ by trying to codify law before the common law courts have addressed the issues. One commentator has pointed to “a disturbing trend . . . of legislatures and academic drafting committees rushing in to dominate and codify nascent fields long before they can develop their own . . . well tested common law rules.”¹⁵² The drafters of UCITA tried to regulate “many of the types of products and transactions that . . . were not yet well defined or in common use,”¹⁵³ resulting in a statute with a “scope . . . broad to the point of swallowing all commercial transactions,”¹⁵⁴ and while purporting to be a commercial practices law it “replace[d] not only sales law but also large segments of intellectual property law.”¹⁵⁵

¹⁴⁹ U.C.C. § 9-603(a) (amended 2003) (2007).

¹⁵⁰ *See* U.C.C. § 9-602 cmt. 2 (amended 2003) (2007) (emphasizing that “suspicious attitudes of the courts have been grounded in common sense,” but noting that “good faith, diligence, reasonableness, and care” allow the parties to change provisions as agreed upon).

¹⁵¹ Perry, *supra* note 143, at 525.

¹⁵² *Id.*

¹⁵³ *Id.* at 548.

¹⁵⁴ *Id.* at 548–49.

¹⁵⁵ *Id.* at 551.

These are important considerations, but ultimately they are not an indictment of all legislative solutions, but only those that fail to “reflect[] well tested and wise rules . . . [and instead impose] a new or pet ideology or trend in legal thought.”¹⁵⁶ An adaptable statute for transactions in virtual items would still allow courts to fashion particular rules for each virtual world, but at the same time provide a workable frame to build on. Additionally, as demonstrated by the evidence gathered through interviews, widely accepted common law rules do not always adequately reflect the expectations of virtual world users.¹⁵⁷ The “established merchant practice and understanding”¹⁵⁸ in virtual worlds might be better served by a new statute drafted based on user expectations than by the courts’ application of the common law of contracts in a field for which it was not designed. UCITA’s broad scope and purported replacement of intellectual property law needs to be avoided, but there is no reason why a statute for transactions in virtual goods would have to be as broad as UCITA. Finally, the fact that state borders are nonexistent in virtual worlds,¹⁵⁹ coupled with the speed at which technology is advancing, makes the need for a uniform law as pressing then as it was when the Uniform Commercial Code was first proposed.¹⁶⁰

C. A Uniform Law For Transactions in Virtual Items

1. An Ideal Uniform Law

An ideal uniform law for transactions in virtual items would reflect the reasonable expectations of virtual world users. First, it would clearly state that virtual items are licenses in intellectual property subject to applicable state licensing laws. Second, it would set a difficult to prove but flexible sliding standard for establishing a breach of contract or a proper revocation of acceptance. For example, the statute would present a number of factors courts could consider in determining breach.

¹⁵⁶ *Id.* at 545.

¹⁵⁷ *See supra* Part III.

¹⁵⁸ Perry, *supra* note 143, at 524.

¹⁵⁹ *See supra* Part III.F.2.

¹⁶⁰ *Cf.* Karl N. Llewellyn, *Why We Need the Uniform Commercial Code*, 10 U. FLA. L. REV. 367, 367 (1957) (“Eighty years ago bankers were swearing at the law of Bills and Notes (mostly Notes) and swearing by the two fat volumes of Daniel. Not that Daniel met the need. Paper ran across state lines, but law didn’t.”).

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An older virtual world with few users and little realistic interaction would demand a harder to meet standard, allowing for low likelihood that the users expect things to work out the way they do in real life. In contrast, a newer virtual world with many users and realistic interaction would demand a standard more in line with the common-law approach. Similar flexible standards would be enacted for other contracting issues not discussed in this article.

Third, virtual merchants would be held to a higher standard as expert sellers, but virtual merchants would be defined in a flexible way. The more a virtual world replicates real world commerce, with actual established shops and a currency convertible to U.S. dollars, the more likely it is for a seller within that world to be a merchant. How the uniform law would deal with international transactions would be more complicated because of federal control over international commerce.¹⁶¹ Perhaps the uniform law could try to avoid this issue by treating transactions as presumptively occurring on a local server unless proven otherwise.

V. CONCLUSION

At this moment in history, commercial transactions stand on the brink of a new paradigm. As the market for virtual items expands, so will the likelihood that disputes in virtual worlds will spill over into real world courts. Current contract models were not designed to accommodate the reasonable expectations of buyers and sellers of virtual items.¹⁶²

Until Congress passes legislation, courts should apply basic contract concepts but bend the standards of current contract models to fit the reasonable expectations of virtual world users. However, the need for a uniform law is real. The new uniform law should avoid UCITA's pitfalls of redefining intellectual property law and possessing an overwhelming scope. Instead, a uniform law for transactions in virtual items should be adaptable to different virtual worlds by codifying general concepts while

¹⁶¹ See U.S. Const. art. I, § 8, cl. 3.

¹⁶² See Hornbuckle, *supra* note 9, at 861 ("Nearly everyone agrees that current commercial laws drafted decades ago to cover the sale of physical goods, such as toasters and cars, are inadequate when it comes to the licensing of information and E-commerce, where 'intangible' products are typically licensed.").

allowing workable standards to rise organically from user expectations in each particular virtual world.

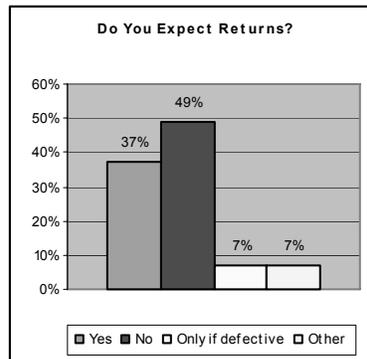
*Michael H. Passman**

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VI. CHARTS

These charts show the results of interviews with users in the virtual world, Second Life. *See supra* note 45 for an explanation of the interview method.

Chart 1



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Chart 2

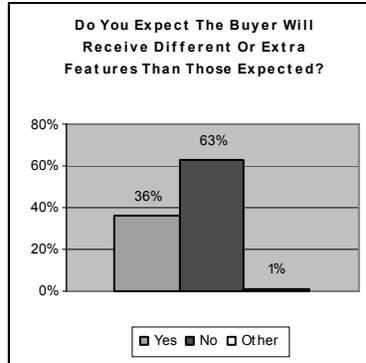


Chart 3

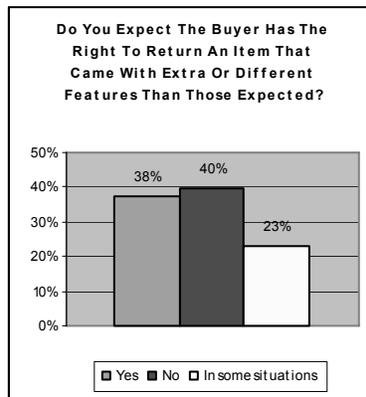


Chart 4

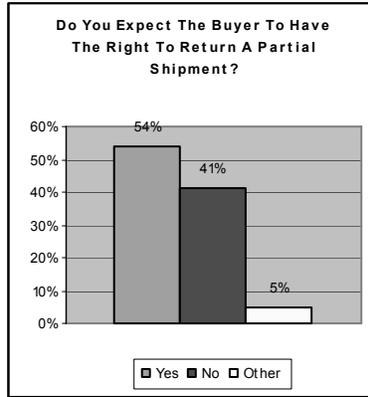


Chart 5

