

**JUST AGE PLAYING AROUND? HOW SECOND LIFE AIDS AND  
ABETS CHILD PORNOGRAPHY**

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*In 2002, Ashcroft v. Free Speech Coalition held that the possession, creation, or distribution of “virtual child pornography,” pornography created entirely through computer graphics, was not a punishable offense because regulation impermissibly infringed on the First Amendment right to free speech and did not harm real children. Only a few years after that decision, however, the Court’s wisdom is being put to the test. A virtual world called Second Life, coupled with motion sensing technology, may provide a means for child pornographers to exploit real children while escaping detection. Second Life also provides a forum where users actively engage in sexual conduct with what appears to be a child. Thus, the Free Speech Coalition Court too narrowly construed “harm to a real child” and failed to render a decision that would keep pace with evolving technology.*

**I. INTRODUCTION**

Ava Tarheel is a tall, slender woman with blonde hair and blue eyes. She is not very different from anyone else in town; Ava owns a clothing shop and lives in a modest house on a popular island with her husband. They enjoy shopping, fishing, and going dancing. Like everyone else in her town, Ava flies, teleports to work, and talks with animals. Ava lives in Second Life.

Second Life<sup>2</sup> is a free-form virtual world, complete with houses, shops, and residents in the form of avatars.<sup>3</sup> Although

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<sup>2</sup> Second Life Home Page, <http://www.secondlife.com> (last visited Feb. 24, 2008).

<sup>3</sup> Merriam-Webster Online, <http://www.merriam-webster.com/dictionary/avatar> (defining “avatar” as “an electronic image that represents and is manipulated by a computer user (as in a computer game)”) (last visited Feb. 24, 2008) (on file with the North Carolina Journal of Law & Technology); *see also*

Second Life is owned and operated by Linden Lab,<sup>4</sup> it is entirely created by its users. Using the Internet, individuals create “avatars,” the characters that they will control in Second Life.<sup>5</sup> These characters, like the Second Life virtual world, are not bound by the laws of science and can take any shape, including that of talking animals, mythological creatures, or even pieces of furniture.<sup>6</sup> Many child avatars are actually created by adults, a practice commonly known as “age play.”<sup>7</sup> The creator controls his avatar, which can teleport to various locations, converse with other avatars controlled by other users, and even purchase items or homes with “Lindens,” the Second Life community currency which can be converted back into real world money.<sup>8</sup>

While many users choose to engage their avatars in innocent commercial and social interactions, others prefer for their avatars

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Second Life: Create an Avatar, <http://secondlife.com/whatis/avatar.php> (“[A]n avatar is your persona in the virtual world.”) (last visited Feb. 24, 2008) (on file with the North Carolina Journal of Law & Technology).

<sup>4</sup> Linden Lab is a California company founded in 1999 by Phillip Rosedale to create Second Life. Linden Lab, <http://lindenlab.com/> (last visited Feb. 24, 2008) (on file with the North Carolina Journal of Law & Technology).

<sup>5</sup> E.g., Bettina M. Chin, Note, *Regulating Your Second Life: Defamation in Virtual Worlds*, 72 BROOK. L. REV. 1303, 1304, 1310 (2007); Kevin W. Saunders, *Virtual Worlds—Real Courts*, 52 VILL. L. REV. 187, 191 (2007); Matt Withers, *A Life Less Ordinary*, WALES ON SUNDAY, July 29, 2007 at 28, available at 2007 WL 14582830.

<sup>6</sup> Daniel Terdiman, *Phony Kids, Virtual Sex*, CNET NEWS, April 12, 2006, [http://www.news.com/Phony-kids,-virtual-sex/2100-1043\\_3-6060132.html](http://www.news.com/Phony-kids,-virtual-sex/2100-1043_3-6060132.html) (on file with the North Carolina Journal of Law & Technology) (“In the . . . virtual world called ‘Second Life,’ a player can pretend to be a bear, an elf or just about anything else he or she imagines.”). See also, Chin, *supra* note 5; Saunders, *supra* note 5; Withers, *supra* note 5.

<sup>7</sup> Catherine Neal, *Children Avatars in Second Life*, ASSOCIATED CONTENT, May 18, 2007, [http://www.associatedcontent.com/article/245698/children\\_avatars\\_in\\_second\\_life.html](http://www.associatedcontent.com/article/245698/children_avatars_in_second_life.html) (on file with the North Carolina Journal of Law & Technology); Rebecca Newman, *Real Police Enter a Fantasy World*, THE FIRST POST: THE ONLINE DAILY MAGAZINE, Feb. 19, 2008, <http://www.thefirstpost.co.uk/?storyID=6846> (on file with the North Carolina Journal of Law & Technology) (named “age play” because Second Life is purportedly an adult-only world, so child avatars would presumptively be adults).

<sup>8</sup> See *supra* note 5.

to have a more sensational existence. Some avatars commit crimes including robbery and prostitution. Promiscuity is rampant, and escort services focusing on “age play” and adult clubs dominate many social scenes.<sup>9</sup> Such clubs often feature deviant or illegal sexual practices, such as sadomasochism, rape, or sexual intercourse with children.<sup>10</sup> For some users, the draw to Second Life lies in the ability to act without the restrictions of the law.<sup>11</sup> However, in Belgium and Germany, two events currently under police investigation raise the question of whether crimes committed in-world<sup>12</sup> can and should have real world ramifications in the United States, including criminal liability for the acts.<sup>13</sup> Both investigations involve avatar “rapes,” one involved a forcible rape between adult avatars and the other a rape involved an adult avatar engaged in sexual intercourse with a child avatar.<sup>14</sup>

In addition to these two real world investigations, the area of child pornography in the virtual world community has likewise caused a particularly heated debate among Second Life users.<sup>15</sup> While some believe that in-world child pornography should not be regulated, others argue that such behaviors constitute obscenity.<sup>16</sup>

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<sup>9</sup> See Newman, *supra* note 7.

<sup>10</sup> Alan Sipress, *Is a Sheriff Needed for Virtual Reality?*, THE WASHINGTON POST, June 2, 2007, at Business sec., available at 2007 WL 10335907.

<sup>11</sup> Edward Castronova, Article, *The Right to Play*, 49 N.Y.L. SCH. L. REV. 185, 193 (2004–2005).

<sup>12</sup> “In-world” events refer to those that happen within Second Life.

<sup>13</sup> *Rape, Child Sex, Muggings: Does Virtual Reality Need Police?*, THE STRAITS TIMES, July 3, 2007, available at <http://digital.asiaone.com/Digital/News/Story/A1Story20070625-16050.html> (on file with the North Carolina Journal of Law & Technology).

<sup>14</sup> *Id.*; Tessa Wong, *They All Want a Second Life: Linden Lab’s Chief Technology Officer Against Bans on Unsavoury Activities as they would Constrain Creativity of Game*, THE STRAIGHTS TIMES (Singapore), July 1, 2007, available at 2007 WLNR 12396827; see *infra* Part V.

<sup>15</sup> See Neal, *supra* note 7; Terdiman, *supra* note 6.

<sup>16</sup> Sara C. Marcy, Recent Development, *Banning Virtual Child Pornography: Is There Any Way Around Ashcroft v. Free Speech Coalition?*, 81 N.C. L. REV. 2136, 2137 (2003); BLACK’S LAW DICTIONARY 1107 (8th ed. 2004) (defining “obscenity” as “[t]he characteristic or state of being morally abhorrent or socially taboo, esp[ecially] as a result of referring to or depicting sexual or excretory functions.”). Obscenity encompasses community standards and thus raises significant questions involving how to define obscenity in a virtual world

Still others prefer to regulate sexual interactions involving avatar children as child pornography.<sup>17</sup> In 2002, however, the United States Supreme Court held in *Ashcroft v. Free Speech Coalition*<sup>18</sup> that pornography involving virtual children could not be regulated.<sup>19</sup> New technology now questions the wisdom of that decision. Due to the Court's narrow definition of "harm to real children," the *Free Speech Coalition* decision has proven to be incapable of handling the ever-evolving issues raised by Second Life due primarily to the Court's narrow definition of "harm to real children." By permitting regulation of child pornography only in the limited case of children being exploited in production,<sup>20</sup> the *Free Speech Coalition* Court failed to consider or foresee many of the harmful ramifications that virtual child pornography can have on real children and real lives.

This Recent Development will examine how Second Life presents challenges to the Court's rationale in *Free Speech Coalition* and will argue that the opinion is ill-equipped to deal with the issues raised by Second Life. Part II of this article will discuss the case law concerning virtual child pornography. Part III of this article will present two different scenarios that are likely to arise within the context of Second Life. Part IV will argue that relaxed enforcement regarding who plays and how they play creates evidentiary difficulties in prosecuting in-world virtual behavior that implicates the exploitation of children and the creation of child pornography. Part V will examine whether sexual conduct between avatars, one of whom is a child, is covered by the holding of *Free Speech Coalition* and can be regulated at all.

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that is international in scope. *Ashcroft v. Am. Civil Liberties Union*, 535 U.S. 564 (2002).

<sup>17</sup> Tony Mauro, *High Court Rejects Child-Porn Law that 'Turns the First Amendment Upside Down'*, FIRST AMENDMENT FREEDOM FORUM, Apr. 17, 2002, <http://www.freedomforum.org/templates/document.asp?documentID=16082> (on file with the North Carolina Journal of Law & Technology) ("The court failed to close a legal loophole that can only diminish efforts to protect children and punish pornographers[.]").

<sup>18</sup> 535 U.S. 234 (2002) [hereinafter *Free Speech Coalition*].

<sup>19</sup> *Id.* at 251.

<sup>20</sup> *Id.*

Finally, Part VI of this article will evaluate the unintended psychological effects of permitted in-world behavior arguing that it facilitates the same real world child exploitation that the *Free Speech Coalition* Court purports to protect, and concluding that virtual child pornography should be regulated.

## II. VIRTUAL CHILD PORNOGRAPHY—THE *FREE SPEECH COALITION* DECISION

Congress has recognized the need to adapt certain criminal statutes to conform to advancing technology.<sup>21</sup> In 1996, the Child Pornography Protection Act (“CCPA”)<sup>22</sup> attempted to make illegal the creation of pornography that did not involve the use of real children. Specifically, provisions of the Act were designed to regulate pornography that appeared to involve children, either by the use of virtual children or youthful looking adults, but did not in fact involve the use of any real children.<sup>23</sup> However, Congressional intent was thwarted by the Supreme Court’s decision in *Free Speech Coalition*,<sup>24</sup> which held that the regulation of pornography produced without the use of real children is an unconstitutional restriction on free speech.<sup>25</sup>

The Court relied on the reasoning established in *New York v. Ferber*,<sup>26</sup> which established that while pornography generally must be obscene to justify regulation, child pornography could be regulated without undertaking an obscenity inquiry because of the

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<sup>21</sup> The Court noted Congress’s finding that as “imaging technology improves, . . . it becomes more difficult to prove that a particular picture was produced using actual children. To ensure that defendants possessing child pornography using real minors cannot evade prosecution, Congress extended the ban to virtual child pornography.” *Id.* at 242.

<sup>22</sup> 18 U.S.C. §§ 1466, 1466A (2000 & Supp. IV 2004).

<sup>23</sup> *Id.* at § 1466A(a)(2)(A)–(d) (prohibiting works that “depict[ ] an image [including a computer or computer-generated image] that is, or appears to be, of a minor engaging in [sexually explicit acts] . . . . It is not a required element of any offense under this section that the minor depicted actually exist.”)

<sup>24</sup> 535 U.S. 234 (2002).

<sup>25</sup> *Id.* at 244.

<sup>26</sup> 458 U.S. 747 (1982).

State's interest in protecting children from sexual exploitation.<sup>27</sup> The *Free Speech Coalition* Court drew a distinction between pornography where the harm comes from its production versus pornography where the content is the source of the harm.<sup>28</sup> The Court chose to permit regulation of the former and deny it to the latter.<sup>29</sup> The Court noted that "the causal link [between actual child abuse and virtual child pornography] is contingent and indirect,"<sup>30</sup> and that the "mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it."<sup>31</sup> The Court thus required that, to find a direct link, children must be harmed in the production of the pornography, stating that "[w]ithout a significantly stronger, more direct connection, the Government may not prohibit speech on the ground that it may encourage pedophiles to engage in illegal conduct,"<sup>32</sup> and that "the CPPA prohibits speech that records no crime and creates no victims by its production."<sup>33</sup>

Of particular relevance in the context of Second Life, the *Free Speech Coalition* Court also declined to ban virtual child pornography on the grounds that computer-generated pornography may make it more difficult to determine when real children are actually being exploited, thus making it difficult to prosecute pornographers using real children.<sup>34</sup> The Court rejected this argument, explaining that the First Amendment does not permit the State to suppress lawful speech (virtual child pornography) in

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<sup>27</sup> *Id.* at 758 & n.9 (noting that children who are victims of exploitation suffer from physical and psychological injuries relating to the abuse as well as harm resulting from continued circulation of the record of the abuse).

<sup>28</sup> 535 U.S. at 250.

<sup>29</sup> *Id.* at 253-54. Justice Kennedy, writing for the five justice majority in *Free Speech Coalition*, did not find harm to real children that justified abridging the right to free speech in virtual pornography. Arguments that pedophiles may use the materials to encourage children to engage in sexual activity and that virtual pornography may actually increase the exploitation of children were likewise rejected.

<sup>30</sup> *Id.* at 250.

<sup>31</sup> *Id.* at 253.

<sup>32</sup> *Id.* at 253-54.

<sup>33</sup> *Id.* at 250.

<sup>34</sup> *Id.* at 255.

order to suppress unlawful speech (real child pornography).<sup>35</sup> In essence, the Court failed to find the “intrinsic relation” between virtual child pornography and the sexual exploitation of children that existed in *Ferber*,<sup>36</sup> making suppression of speech in this area without regard to obscenity unjustified.<sup>37</sup>

The dissenting justices indicated that of “serious concern is the prospect that defendants indicted for the production, distribution, or possession of actual child pornography may evade liability by claiming that the images attributed to them are in fact computer-generated.”<sup>38</sup> The dissent further noted that “given the rapid pace of advances in computer-graphics technology, the Government’s concern is reasonable.”<sup>39</sup> Subsequent cases reason that the jury can still distinguish between real and virtual children,<sup>40</sup> and it is on this basis that the majority in *Free Speech Coalition* believes that technological advancement to the point of indistinguishability is desirable, as few child pornographers would risk punishment by using actual children rather than indistinguishable virtual images.<sup>41</sup> However, virtual worlds such as Second Life pose unique problems that were not anticipated by the Court.

One such problem is that real children may be involved in the production of virtual child pornography. While such behavior

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<sup>35</sup> *See id.*

<sup>36</sup> *N.Y. v. Ferber*, 458 U.S. 747, 759 (1982). *Ferber* found that child pornography is intrinsically related to the sexual abuse of children in two ways. First, the pornography creates a record of the abuse that would harm the child through continued circulation. *Id.* Second, the economic incentive to create more child pornography justifies the state’s interest in closing the child pornography market by imposing harsh criminal penalties. *Id.*

<sup>37</sup> Individual instances of virtual child pornography may still be banned but only if they are obscene. Each work of virtual child pornography would be subject to the obscenity test established in *Miller v. California*, 413 U.S. 15, 24 (1973), and could be regulated if the “works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Id.*

<sup>38</sup> *Free Speech Coalition*, 535 U.S. at 263 (O’Connor, J., Rehnquist, C.J., and Scalia, J., concurring in the judgment in part and dissenting in part).

<sup>39</sup> *Id.* at 264.

<sup>40</sup> *United States v. Kimler*, 335 F.3d 1132, 1142 (10th Cir. 2003).

<sup>41</sup> *Free Speech Coalition*, 535 U.S. at 254.

would clearly be criminal (even under *Free Speech Coalition*), the investigative problems posed would make it difficult to sort out virtual child pornography (legal) from real child pornography that looks like virtual child pornography (illegal). The first obvious question is how real children could be involved in the production of child pornography if avatars are mere virtual beings created by individuals manipulating various features<sup>42</sup> to arrive at the final desired look. The answer is that new motion-sensing technology<sup>43</sup> that will potentially be incorporated into Second Life could involve the exploitation of real children while the output appears to be a mere virtual representation.<sup>44</sup> Considering that many of the actions in Second Life involve sexual motions, an avatar wishing to engage in sexual interactions may need to actually perform these motions if using the motion sensor technology. For example, if a child is participating in Second Life,<sup>45</sup> the potential for real child

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<sup>42</sup> Almost every imaginable characteristic of avatars can be manipulated. For example, Second Life boasts “infinite possibilities” for changing looks and explains that it “allows you to change anything you like, from the tip of your nose to the tint of your skin.” Second Life: Create an Avatar, *supra* note 3.

<sup>43</sup> See Hiroko Tabuchi, *Making Second Life More Like Real Life*, MSNBC, Nov. 21, 2007, <http://www.msnbc.msn.com/id/21917042/> (on file with the North Carolina Journal of Law & Technology) (explaining that this technology is “letting players use their own bodies . . . to control their avatars.”). Researchers are even developing a method of measuring brainwaves through sensors affixed to the user’s head to control avatar movement. *Id.*

<sup>44</sup> See *id.* This technology involves using a simple webcam and color-coded mat so that when an individual moves, her avatar will perform the same motions. “The user turns left, and the avatar turns left. The user crouches down, and the avatar follows.” *Id.* Additionally, the technology is so advanced that it even switches angles to gain the proper point of view. For example, “[w]hen [the researcher during a demonstration] crouched down to peer under a virtual parked car, the image swerved to show what his avatar would ‘see’ — the vehicle’s underside.” *Id.* While the inventor of this technology currently claims that he has no plans to sell the product commercially, he has applied for a patent. *Id.*

<sup>45</sup> While Second Life is designed to be an adult-only world, children nevertheless have access to the virtual community. Currently, Second Life merely asks the user for a birthdate and relies solely on the user-supplied information to determine age and depends on users to report underage members. In an attempt to keep children out of the ever-growing virtual world, Linden Lab is currently testing an age verification system scheduled to debut in May of 2008, but this system is as flawed as relying on self-reporting of age. While the

exploitation exists if the child engages his avatar in sexual conduct while wearing the motion sensors, as the child would be conducting the involved movements. Further, even activities that may seem innocuous to the child participant may be transformed into a form of child pornography on Second Life.<sup>46</sup> The motion-sensing technology paves the way for a host of other situations that could give rise to the exploitation of a real child and result in irreparable harm.<sup>47</sup> This includes, but is not limited to, the forced

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new system does have the added protection of requiring identification, such identification will only be required if the avatar wishes to enter a Second Life location marked as “adult,” and the burden of marking virtual land, which users purchase with Lindens, as adult falls on the landowner. Considering that the definition of “adult” varies among different individuals, many locations that contain adult content may not be flagged, and there is little to no monitoring by Linden Lab itself. Even assuming that landowners do flag their location as adult, children may still easily gain access to these areas through the use of someone else’s avatar or identification. Age and Identity Verification in Second Life, <http://blog.secondlife.com/2007/05/04/age-and-identity-verification-in-second-life/> (last visited Feb. 28, 2008) (on file with the North Carolina Journal of Law & Technology). Moreover, the fact that children may view adult content does not in itself warrant punishment. According to *Free Speech Coalition*, “[t]he Government cannot ban speech fit for adults simply because it may fall into the hands of children.” 535 U.S. at 252. While speech may not be suppressed simply because there is a risk that children will access it, a heightened duty of verifying age should fall on Linden Lab.

<sup>46</sup> For example, the child may be asked to dance fully clothed but the output is of a child avatar dancing nude. While the child is not sexually exploited in this case, the interests of a real child are clearly implicated in that he or she has been used to produce virtual child pornography. Such activity would likely fall into the realm of conduct that *Free Speech Coalition* expressly declined to rule upon, commenting that the appropriation of a real child’s image and subsequent conversion into pornography (called morphing) would be regulated under *New York v. Ferber*, 458 U.S. 747 (1982), if regulated at all. See 535 U.S. at 242.

<sup>47</sup> See, e.g., KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 65 (4th ed. 2001). Lanning is a thirty-year veteran of the FBI who spent years investigating and consulting on cases involving the sexual victimization of children. *Id.* at iii. He observes:

Children used in pornography are desensitized and conditioned to respond as sexual objects. They are frequently ashamed of their portrayal in such material. They must deal with the permanency, longevity, and circulation of such a record of their sexual victimization. . . . [T]here is no denying or hiding from a sexually explicit photograph or videotape. The child in a photograph or

performance of sexual acts on the individual or others with the outward appearance of only harm to avatars rather than real children.

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videotape is young forever, and the material can be used over and over again for years. Some children have even committed crimes in attempts to retrieve or destroy the permanent records of their molestation.

*Id.* at 65. In a virtual world like Second Life, the harm may be of a different sort, but it is not diminished simply because an avatar is the initial victim; the child may identify closely with his or her avatar:

[W]hen the user acts through the avatar, she speaks about this connection as *being* the avatar. This is fundamentally a different relationship from what is found with a cherished possession, such as a wedding ring. People do not speak of property, even cherished property, using the first person. By contrast, identification with the avatar is the norm—so much so that conversations in virtual worlds are often hard to parse. . . . [In your activities and interactions with others, they] may ask ‘you’ where you’re from, how old you are, and whether you’re male or female—and here the questions are about ‘you’ in real life. When later recounting virtual interactions to others, it is also customary to use the first person to describe the actions of one’s avatar.

F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CAL. L. REV. 1, 64 (2004); *see also* Susan W. Brenner, *Is There Such a Thing as “Virtual Crime”?*, 4 CAL. CRIM. L. REV. 1, ¶ 102–10 (reporting a victim of avatar-rape crying on several occasions and experiencing fear, humiliation, and sadness in real life).

The harm through continued circulation of a record of the sexual victimization is an issue for virtual child pornography as well, and may become an even greater concern. A combined effort between IBM and Second Life aspires to create a “universal avatar” that would allow individuals to maintain one avatar for all online communications with the end goal of having all business conducted via virtual worlds. *See* Press Release, IBM, *IBM and Linden Lab Launch Collaboration to Further Advance the 3D Internet* (Oct. 10, 2007), <http://www-03.ibm.com/press/us/en/pressrelease/22428.wss> (on file with the North Carolina Journal of Law & Technology); Stefanie Olsen, *Meet Me in My Avatar’s Office*, CNET NEWS, Jan. 23, 2007, [http://www.news.com/2100-1043\\_3-6152727.html](http://www.news.com/2100-1043_3-6152727.html) (on file with the North Carolina Journal of Law & Technology); *Universal Avatars Bestride Worlds*, BBC NEWS, Oct. 11, 2007, <http://news.bbc.co.uk/2/hi/technology/7038039.stm> (on file with the North Carolina Journal of Law & Technology). Such a plan would strengthen the connection between avatar identity and personal reputation, and would equate the harm from continued circulation of real child pornography with the harm from continued circulation of virtual child pornography.

### III. IN-WORLD CONDUCT WITH REAL WORLD IMPLICATIONS

There is little doubt that in-world conduct can have real world ramifications. Within Second Life, the first and perhaps most obvious example arises from the granting of intellectual property rights to the users, or creators of in-world objects, rather than the creator of the virtual world itself.<sup>48</sup> As a result, individuals can earn real world money or suffer real pecuniary losses from their virtual world business investments.<sup>49</sup> Individuals may also maintain a cause of action offline if their in-world intellectual property is misappropriated.<sup>50</sup>

In addition to pecuniary damages, freedom to interact free from the laws of physics and law enforcement supervision may yield other kinds of damages as well. For example, cases in Europe are currently under investigation for avatar “rape.”<sup>51</sup> Criminal sanctions imposed offline for such in-world conduct are not outside the realm of possibilities. While speech in European

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<sup>48</sup> See Viktor Mayer-Schönberger & John Crowley, *Napster's Second Life?: The Regulatory Challenges of Virtual Worlds*, 100 NW. U. L. REV. 1775, 1790 (2006).

<sup>49</sup> When an individual initially creates an avatar, the avatar is given a limited number of Lindens. Additional Lindens can be purchased by converting real money into Lindens via the “ATMs” located throughout the Second Life community or earned through the sale of virtual items. Chin, *supra* note 5, at 1304. The virtual items exist as software to which the creator has the intellectual property rights, and these Lindens can then be converted back to real world currency to earn a profit. See Mayer-Schönberger & Crowley, *supra* note 48, at 1790. The profit earned is substantial enough for some to justify quitting a real world job in order to devote their full time to a business in Second Life. The top ten Second Life entrepreneurs earn an average salary of \$200,000 per year, and one creator has actually earned over \$1,000,000 based on Second Life profits. Chin, *supra* note 5, at 1305, 1313.

<sup>50</sup> The court in the pending SexGen case, for example, will hear a lawsuit where one creator “stole” the software code for a bed granting avatars the ability to engage in new erotic positions and sold it for a cheaper price than the creator, thus depleting his market and infringing upon the copyright. Amended Complaint (first), *Eros, L.L.C. v. Leatherwood*, No. 8:2007cv01158 (M.D. Fla. filed Oct. 24, 2007).

<sup>51</sup> See Sipress, *supra* note 10.

countries is more limited than in the United States,<sup>52</sup> Americans are not necessarily safe from the imposition of criminal liability based upon virtual world conduct. A crime such as avatar “rape” may be legitimately prosecuted for obscenity in the United States based on the fact that it is merely an old crime committed in a new way.<sup>53</sup> However, conventional crimes do not neatly encompass all conduct that Congress might desire to regulate with respect to virtual worlds.

A. *Real Crimes with Investigative Difficulties*

Certainly the use of real children to produce pornography that can be viewed within Second Life would be criminal under the existing statutes; however, the enforcement of such statutes is fraught with pitfalls in the context of a virtual world such as Second Life. One primary concern is that individuals can, and have, manipulated the in-world rules such that the normal in-world code of behavior is violated.<sup>54</sup> While the instances of in-world rape and possible exploitation of children discussed above may very well rise to the level of obscenity such that criminal sanctions may be imposed, the perpetrator must first be identified. Part IV of this paper will address potential enforcement and evidentiary problems that arise in the context of virtual worlds.

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<sup>52</sup> In Germany, for example, an individual can go to prison for up to three years for possession of virtual child pornography. BBC NEWS, *Second Life “Child Abuse” Claim*, May 9, 2007, <http://news.bbc.co.uk/2/hi/technology/6638331.stm> (on file with the North Carolina Journal of Law & Technology). See also Robert Dingwall, *Turn Off the Oxygen . . .*, 41 LAW & SOC’Y REV. 787, 792 (2007) (“Free speech in Europe is not such an absolute as in the United States.”); Daniel Halberstam, *Desperately Seeking Europe: On Comparative Methodology and the Conception of Rights*, 5 INT’L J. CONST. L. 166, 181 (2007) (“[W]e are still likely to find greater tolerance for speech in the United States than in Canada or Europe.”).

<sup>53</sup> The activity would have to be obscene under the standard established in *Miller v. California*, 413 U.S. 15, 24 (1973) (“A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.”).

<sup>54</sup> See *Rape, Child Sex, Muggings: Does Virtual Reality need Police?*, *supra* note 13.

B. *Sexual Conduct with an Adult Posing as a Child Avatar*

In addition to the possibility of a child controlling a child avatar, it is very likely (in fact, it is more likely)<sup>55</sup> that the child avatar will be controlled by an adult. Such behavior would not directly involve the interests of any real children since no real child is even involved, and it would thus fall drastically short of the standard required by *Ashcroft v. Free Speech Coalition*. The policies behind prohibiting such conduct, discussed in Part V *infra*, lose some force when dealing solely with adults and may run afoul of privacy interests as well as the First Amendment.<sup>56</sup>

**IV. REAL CRIMES WITH PROBLEMATIC ENFORCEMENT AND PROOF ISSUES**

Avatars are forbidden from using real names in many virtual worlds such as Second Life.<sup>57</sup> Each avatar is unique,<sup>58</sup> and Second Life requires “age verification” to create an avatar.<sup>59</sup> However, even assuming that the information regarding the offline controller of the avatar is relinquished upon allegation of an in-world crime, this information only narrows the suspect pool to those who have

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<sup>55</sup> Second Life is an adult-only world, but children can gain access with relative ease. *See supra* note 45. While children may have access, most child avatars will likely be controlled by adults, given the prevalence of age-play and a probable modicum of success of Second Life’s efforts to keep children out of the community. *See Neal, supra* note 7.

<sup>56</sup> U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”).

<sup>57</sup> While users are free to choose their avatar’s first name, Second Life provides a list of surnames from which to select. Second Life Registration: Basic Details, <https://secure-web5.secondlife.com/join/index.php/Choose-Name> (last visited Feb. 28, 2008) (on file with the North Carolina Journal of Law & Technology).

<sup>58</sup> *See* Second Life: Create an Avatar, *supra* note 3.

<sup>59</sup> *See* Age and Identify Verification in Second Life, *supra* note 45. The age verification system may give rise to a reasonable belief that the avatar with whom an individual is interacting is an adult. However, because children could obtain access, the reasonableness of the belief that other avatars are always adults is called into question.

access to the avatar.<sup>60</sup> It is important to keep in mind that there are no virtual world law enforcement officers, and as such, the problems involving suspect identification are even more difficult in a virtual world than they are in the real world.<sup>61</sup> Additionally, even if there are witnesses to the in-world crime, these witnesses are vulnerable both to the weaknesses of eyewitness testimony in the real world and to the limitations resulting from the fact that their description would only be of the avatar and not the individual.<sup>62</sup> Furthermore, a user can change an avatar's physical appearance at any time, so the description would no longer be accurate.<sup>63</sup> Thus, virtual worlds pose an even more difficult problem of identification and capture than does the real world.

Assuming an offender is caught, the trier of fact in a child pornography case also must grapple with the problem of determining whether the child is real.<sup>64</sup> Because avatars in Second

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<sup>60</sup> In *Eros, L.L.C. v. Leatherwood*, No. 8:2007cv01158 (M.D. Fla. Filed Oct. 24, 2007), Linden Lab did not relinquish the user's identity until subpoenaed, which requires a showing of probable cause. Benjamin Duranske, *Linden Lab Produces Documents Responsive to Eros' Subpoena in SexGen Intellectual Property Suit*, VIRTUALLY BLIND, August 6, 2007, <http://virtuallyblind.com/2007/08/06/linden-lab-complies-subpoena/> (on file with the North Carolina Journal of Law & Technology).

<sup>61</sup> It must be proven not only that a particular avatar committed the in-world crime but also that a particular individual is responsible for the actions of that avatar. In the *Eros* case, for example, the named defendant denies that he controls the offending avatar. Benjamin Duranske, *Defendant Named in Eros Intellectual Property Suit*, VIRTUALLY BLIND, October 25, 2007, <http://virtuallyblind.com/2007/10/25/robert-leatherwood-identified-eros/> (on file with the North Carolina Journal of Law & Technology).

<sup>62</sup> Individuals may not be able to describe the avatar accurately. See, e.g., Investigative Interviewing Research Laboratory: Cross Racial Identification, <http://iilab.utep.edu/eid.htm> (last visited Feb. 28, 2008) (on file with the North Carolina Journal of Law & Technology) (explaining that the cross-racial effect or own-race bias refers to the fact that eyewitnesses more easily and accurately identify members of their own race than those of opposite race). Considering that humans would be identifying avatars, the effect would likely be even greater than the cross-race effect in that an individual would have difficulty remembering or accurately describing and identifying an avatar who committed an in-world crime.

<sup>63</sup> See *supra* note 42.

<sup>64</sup> See generally *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002)

Life do not look like real children, child pornographers may have the means to “fly under the radar” by selling their pornography in this virtual world. If, as the courts have said, it is required that the child pornography use a real child to be criminalized<sup>65</sup> and individuals can distinguish between real and virtual children,<sup>66</sup> then pornography involving what looks like virtual children would not be policed. However, just because a child does not appear to be real to the casual observer does not mean that the child is not in fact real. Of course pornography involving real children would be criminal, but detection, and therefore prosecution and punishment, is unlikely if the output appears to be of a virtual child. Because the law holds that juries can distinguish between virtual children and real children and expert testimony is not required to determine whether the child is real,<sup>67</sup> child pornographers now have a way out by claiming the pornography is virtual and thus does not lend itself to punishment.<sup>68</sup>

#### **V. ADULT CONDUCT THAT IMPLICATES CHILD PORNOGRAPHY ISSUES**

Age play, where an adult controls a child avatar,<sup>69</sup> raises the question of whether such conduct can and should be regulated. While some of the policy rationales that would support regulation remain the same regardless of whether a child or an adult is behind a child avatar, any attempts to regulate virtual child pornography involving only adults would certainly fail under prevailing law and perhaps for good reason. Such behavior would not be regulated under *Free Speech Coalition* because the interests of real children

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(holding that only pornography involving real children is punishable).

<sup>65</sup> *Id.*

<sup>66</sup> *United States v. Kimler*, 335 F.3d 1132 (10th Cir. 2003).

<sup>67</sup> *Id.* at 1142:

“Free Speech Coalition[ ] did not establish a broad, categorical requirement that, in every case on the subject, absent direct evidence of identity, an expert must testify that the unlawful image is of a real child. Juries are still capable of distinguishing between real and virtual images; and admissibility remains within the province of the sound discretion of the trial judge.”

<sup>68</sup> *Free Speech Coalition*, 535 U.S. at 264 (O’Connor, J., dissenting in part).

<sup>69</sup> *See* Neal, *supra* note 7.

are not directly implicated in that children were not physically exploited in the production of the virtual child pornography.<sup>70</sup>

While some of the policies advocating punishment in Part VI below remain in this situation, others drastically fail. This scenario would not, for example, provide a forum for pedophiles to experiment with techniques designed to seduce children. Similarly, while the individual would engage in a mentally sexual encounter with a symbolic child, he would likely (and reasonably) believe that it was controlled by an adult, which may lessen the culpability in that he would not truly be engaging in such behaviors for the sole reason that it was with a child.

In addition to the policy not supporting regulation as strongly in this context as when a child is behind a child avatar, an obvious objection based on *Lawrence v. Texas*<sup>71</sup> may stand in the way of regulation where only adults are involved. *Lawrence* held that a state may not criminalize consensual sexual activity occurring between two adults in private.<sup>72</sup> The question then becomes whether conduct committed in a virtual world is considered private. On one hand, individuals sitting alone in their homes or engaging their avatars in sexual conduct in a “private” virtual location such as a virtual home seems clearly private. On the other hand, the virtual world is a place that has many intersections with the real world and to which many individuals have access. Further, the users may not be alone in their homes when engaging in such activity; it is entirely possible that even if the avatars appear to be alone in-world, the user is in a public location while visiting Second Life. Because there is no reasonable guarantee that the other party is in a private place when dealing with the faceless virtual world, Second Life should be considered a public forum such that a state may regulate such conduct under the *Lawrence* analysis.

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<sup>70</sup> See *supra* Part III.

<sup>71</sup> 539 U.S. 558 (2003).

<sup>72</sup> *Id.* at 578 (holding that such regulation of consenting adults in a private place violates the Due Process Clause of the 14th Amendment of the United States Constitution).

A second inquiry arises as to how to define “consenting adult” in the context of Second Life. This is most controversial where a child controls an adult avatar and where an adult controls a child avatar. In the case of a child controlling an adult avatar, an adult engaging in cybersex with the avatar may believe that it is controlled by an adult. The reasonableness of this belief, however, must be questioned, particularly given the prevalence of age play. As discussed, children may have access to Second Life and thus individuals should at least be on notice that what appears to be an adult avatar may actually be controlled by a child.<sup>73</sup> In the case of an adult controlling a child avatar, different problems are presented. Even if an adult engaging in cybersex with a child avatar believes, perhaps reasonably considering children are not permitted in Second Life and age play is very common, that an adult is behind a child avatar, the adult is still engaging in a sexual interaction with a representation of a child. Determining which beliefs as to age are reasonable is thus complicated by virtual worlds and the prevalence of age play.

## VI. WHAT SHOULD THE LAW BE?

The possibility of imposing criminal liability for acts committed in a virtual world raises some significant policy implications. Second Life has become a virtual world that has a strong intersection with the real world in many areas<sup>74</sup> and is more than an entertaining video game to many, if not most, of its residents/players.<sup>75</sup> Given the connection to real world issues and the precedent of allowing actions arising in virtual worlds to have real world consequences, virtual criminal actions should have real life ramifications as well. Because of the danger to real children

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<sup>73</sup> See *supra* note 45 and accompanying text.

<sup>74</sup> See Castronova, *supra* note 11; Chin, *supra* note 5; Lastowka & Hunter, *supra* note 47. Through their avatars, creators can buy land, sell products, and make real world profits as well as plant test products, give concerts and speeches, and hold political rallies. Some people have even quit their real world jobs to engage in more profitable virtual businesses, and one woman has earned a profit of over one million U.S. dollars based on her Second Life company.

<sup>75</sup> See Castronova, *supra* note 11; Lastowka & Hunter, *supra* note 47.

and the culpability of the users creating virtual child pornography, virtual child pornography in Second Life should be regulated.<sup>76</sup>

A. *Desensitization as a Means to Harm Real Children*

In addition to the potential for real physical harm to a child through the production of virtual pornography in Second Life, the virtual world opens the gateway to future sexual abuse of children, a harm which the *Free Speech Coalition* court doesn't consider to be direct enough to justify regulation.<sup>77</sup> Given that merely showing videos of a child engaged in sexual behaviors is often successfully used to convince the child to engage in such behavior himself,<sup>78</sup> it may not be too difficult to convince a child to engage in such conduct in Second Life which may seem like a high-tech video game.<sup>79</sup> Due to the sexual nature of Second Life, the child's avatar would undoubtedly encounter illicit sex, likely with an adult.<sup>80</sup> The potentially easy access a child has to the Second Life world and sexual conduct within that world could dramatically affect the child's perception of sexual conduct. The child's view of normal sexual conduct may come to include sexual interactions with adults—which it seems is exactly what a pedophile would want the child to believe.<sup>81</sup>

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<sup>76</sup> While the policy of protecting children warrants legal regulation of virtual child pornography, virtual child pornography is not criminal under the *Free Speech Coalition* decision. Virtual child pornography should therefore be regulated in-world until the law catches up with technology. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

<sup>77</sup> *Id.*

<sup>78</sup> Candice Kim, *From Fantasy to Reality: The Link Between Viewing Child Pornography and Molesting Children*, CHILD SEXUAL EXPLOITATION UPDATE, (American Prosecutors Research Institute, Alexandria, VA), Nov. 3, 2004, available at [http://www.ndaa.org/publications/newsletters/child\\_sexual\\_exploitation\\_update\\_volume\\_1\\_number\\_3\\_2004.html](http://www.ndaa.org/publications/newsletters/child_sexual_exploitation_update_volume_1_number_3_2004.html) (on file with the North Carolina Journal of Law & Technology).

<sup>79</sup> It is not too far-fetched to assume that children will obtain identification from their parents or other adult which would enable them to enter the Second Life adult world. If so, it is also not far-fetched to assume that a child may very well create a child avatar.

<sup>80</sup> See Sipress, *supra* note 10.

<sup>81</sup> Child molesters often engage in a process called grooming in which the adult seeks to lure the child into a relationship of trust with the ultimate goal of

B. *Second Life as Practice for Real Life*

In addition to enforcing pedophilic conduct, the online behavior of luring a child avatar (which may have a child controller) may provide practice for luring real children into sexual encounters in the real world. Second Life essentially provides a realm in which the adult could research and implement various tactics to determine what kinds of behaviors or communication would convince a child to engage in sexual behavior.<sup>82</sup>

Second Life also provides a forum for support and swapping techniques with other child pornographers. Second Life is an

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sexually abusing the child. One common method used to groom children is by showing them pornography to make sexual interactions seem normal to the child. See Kim, *supra* note 78. Kim cites the testimony of John B. Rabun, Deputy Director, National Center for Missing and Exploited Children stating that:

Child molesters use both adult pornography and child pornography in the grooming process, albeit for different purposes. Adult pornography is most often used to arouse the victim and break down the child's barriers to sexual behavior. Child pornography is also used to break down the child's barriers to sexual behavior, but serves the additional purpose of communicating the child molester's sexual fantasies to the child. Repeated exposure to both adult and child pornography is intended to diminish the child's inhibitions and give the impression that sex between adults and children is normal, acceptable and enjoyable. The child pornography used for this purpose depicts children who are smiling, laughing and seemingly having fun, which in turn both legitimizes sex between adults and children and portrays these sexual activities as enjoyable.”)

See also LANNING, *supra* note 47 at 70 (“A second use of child pornography and erotica is to lower children's inhibitions. A child who is reluctant to engage in sexual activity with an adult or pose for sexually explicit photographs can sometimes be convinced by viewing other children having ‘fun’ participating in the activity.”); see also Kim, *supra* note 78 (reporting results of a study based on 1,400 cases of child molestation over a four year period showing that pornography was connected with every incident of molestation, and child pornography was used in a majority of those cases).

<sup>82</sup> See LANNING, *supra* note 47, at 69 (commenting that “[p]edophiles often collect and distribute articles and manuals written by pedophiles in which they attempt to justify and rationalize their behavior. In this material pedophiles share techniques for finding and seducing children and avoiding or dealing with the criminal-justice system.”).

active forum for trading real child pornography as well as virtual child pornography,<sup>83</sup> and the correlation between viewing child pornography and harming real children is too strong to ignore.<sup>84</sup> Further, it facilitates harm to real children by providing affirmation of pedophilic conduct via social support from like-minded individuals.<sup>85</sup> By prohibiting and condemning violent and illegal behavior in-world, Second Life (and hopefully the law eventually) would thus reaffirm disapproval of those acts rather than permitting them.

C. *The Active Role Required Warrants Punishment*

In addition to the potential harm to real children caused by the motion sensing technology, the rationale of *Free Speech Coalition* fails to address another concern brought to the forefront by Second Life. At the time *Free Speech Coalition* was decided, virtual

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<sup>83</sup> German news reporter Nick Schader sought to investigate the illicit sex with child avatars that occurred in Second Life. Other users asked Schader to pay to attend meetings where both virtual and real child pornography was being shown and offered to put him into contact with a ring of real child pornographers offline; see Second Life Child Abuse Claim, *supra* note 52; see also Newman, *supra* note 7; CBC NEWS, *Child Porn, Virtual Sex Ring Found in Second Life*, May 9, 2007, <http://www.cbc.ca/technology/story/2007/05/09/tech-secondlifechildporngermany-20070509.html> (on file with the North Carolina Journal of Law & Technology).

<sup>84</sup> Studies indicate that those who possess or trade in child pornography are likely active abusers. One study found that at least 80% of those who purchase child pornography are active abusers, and another found that 76% of offenders convicted of internet-related crimes against children admitted to having undetected sexual contact with an average of 30.5 children. See Kim, *supra* note 78. Thus, individuals drawn to child pornography through Second Life are likely actively involved in the abuse of real children as well, yet the *Free Speech Coalition* decision refuses to recognize that there is a direct link between virtual child pornography and the abuse of real children.

<sup>85</sup> See LANNING, *supra* note 47, at 63, 69. (“Many preferential sex offenders swap pornographic images the way boys swap baseball cards. As they add to their collections they get strong reinforcement from each other for their behavior. The collecting and trading process becomes a common bond.”) This may be particularly true for “cottage collectors,” which are individuals who share their child pornography with others, usually seeking affirmation of their conduct. *Id.* at 69. Second Life provides that affirmation through virtual locations geared towards swapping virtual child pornography with other like minded individuals.

worlds rivaling the present size and in-world behavioral possibilities of Second Life did not exist<sup>86</sup> and were therefore likely not envisioned by the Court and were certainly not discussed. The Court rendered a decision that necessarily stifled the states' ability to regulate culpable behavior that could very likely yield real world harms.

Participation in child pornography in Second Life facilitates more active (and therefore more culpable) participation than merely watching child pornography and certainly more than mere possession of child pornography.<sup>87</sup> Engaging in sexual interactions with a child avatar may be more akin to directing child pornography because of the more active role required. Instead of passively watching child pornography, such a user would actually have to manipulate his avatar so that he engaged in sex with something that represented a child.<sup>88</sup> While there is not any physical contact during avatar sex (also called cybersex), the mental element of initiating a sexual interaction with a child representation is still present. Directors of real child pornography are certainly punished more highly than mere viewers and it seems unfathomable that the law would not address such active behavior as purposely engaging in sexual interactions with a symbolic child. Such behavior is certainly cause for concern,<sup>89</sup> as it will leave the

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<sup>86</sup> Second Life did not open to the public until 2003. Second Life: What is Second Life, <http://secondlife.com/whatis/> (last visited Feb. 28, 2008) (on file with the North Carolina Journal of Law & Technology). While other virtual worlds existed, none rivaled Second Life in terms of size or technology. Early virtual worlds, for example, were entirely text-based and did not have nearly the numeric reach of Second Life.

<sup>87</sup> Both viewing and possessing child pornography are criminalized. *See e.g.*, *Osborne v. Ohio*, 495 U.S. 103, 110 (1990); *N.Y. v. Ferber*, 458 U.S. 747, 761 (1982).

<sup>88</sup> Regardless of whether the user believed the child avatar was a child or an adult, the sexual component of the act involves sex with something that is supposed to be a child.

<sup>89</sup> *See* Terdiman, *supra* note 6 ("It may be a red flag if someone—say an adult male playing an adult male engaged in play with a young female avatar—is repeatedly playing the role of sexually aggressing a child in the game," said Joy Davidson, a certified sex therapist and author of 'Fearless Sex.' 'I would be concerned about someone who is continually choosing to play the role of someone sexually aggressing a child.' But Davidson said most other cases—the

adult unpunished (or even rewarded) for in-world behavior, which may increase the likelihood of engaging in such behavior offline.<sup>90</sup>

*D. Virtual Worlds are Incapable of Regulating Child Pornography*

While Linden Lab asserts that users engaging in virtual child pornography will be expelled from the virtual world and that they will cooperate in any police investigations, this appears to be somewhat of an empty threat. As discussed above, virtual child pornography is not criminal in the United States. Furthermore, many believe that Linden Lab's expulsion policy will not be enforced.<sup>91</sup> Linden Lab admits that reports of virtual child abuse are "exceedingly rare,"<sup>92</sup> yet the issue of common virtual child abuse has been discussed for over a year, which implies that many

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person playing a young girl avatar, or someone only trying out the role of the adult male engaging in digital sexual activity with a child avatar, for example—could well be the behavior of people fantasizing about their own times as a sexually active teen.”).

<sup>90</sup> Dr. Christopher L. Heffner, *Psychology 101: Chapter 4: Learning Theory and Behavioral Psychology*, ALLPSYCH ONLINE; Apr. 1, 2001, <http://allpsych.com/psychology101/reinforcement.html> (on file with the North Carolina Journal of Law & Technology).

<sup>91</sup> Tony Walsh, *Child Porn Panic Hits “Second Life,”* CLICKABLE CULTURE, May 10, 2007, [http://www.secretlair.com/index.php?/clickableculture/entry/child\\_porn\\_panic\\_hits\\_second\\_life/](http://www.secretlair.com/index.php?/clickableculture/entry/child_porn_panic_hits_second_life/) (on file with the North Carolina Journal of Law & Technology) (commenting “despite its strong words, I don't believe that Linden Lab actively or consistently polices *Second Life*—the virtual world is just too big. Instead, the company employs a system of ‘Abuse Reports,’ whereby users of the virtual world file complaints about such things as harassment, litter, ‘adult’ content, and trademark infringement. Through a pending ‘Estate Governance’ program, Abuse Reports will actually be sent to virtual land owners rather than Linden Lab, distancing the company further from what goes on inside *Second Life*. In a recent announcement about an identity-verification policy, the company appeared to alleviate itself completely of legal responsibility, stating that users ‘are morally and legally responsible for the content displayed and the behavior taking place on their land.’ Unfortunately, a vast majority of *Second Life* users don't have the means to watch over their virtual land around the clock. Without constant supervision, it's practically impossible to stop illegal acts from transpiring on one's virtual land.”).

<sup>92</sup> *Id.*

instances are unreported and thus unpunished by Second Life's policy of virtual world expulsion.<sup>93</sup>

## VII. CONCLUSION

While there are downfalls to regulation,<sup>94</sup> it seems that the policy behind regulation of virtual child pornography is too strong to ignore. While some avatars engage in devious conduct, many more are outraged at cybersex with children avatars and seek to have such conduct outlawed in Second Life.<sup>95</sup> Such a reaction from members who subscribe to a virtual world without rules indicates the level of discomfort with the allowance of virtual child pornography. Additionally, evolving technology has created the possibility for real child abuse to go undetected in the virtual world of Second Life. While pornography involving the use of real children is currently criminal under *Free Speech Coalition*, the investigative difficulties posed by Second Life make it next to impossible for culpable offenders to be detected and punished. In addition to direct harm to children through the production of child pornography, Second Life will cause real children to be exploited in the future. By permitting age play, Second Life desensitizes individuals to child pornography and provides a forum for trading real child pornography and validating pedophilic conduct. These harms, though less tangible and not directly related to the

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<sup>93</sup> *Id.*

<sup>94</sup> For example, one serious downfall is that violent crimes occurring against avatars are not the same as those occurring against individuals. Perpetrating a virtual crime arguably involves less mental culpability, and the act is certainly less in a virtual crime. Additionally, many games exist for the sole purpose of committing crimes, such as murder, yet society does not attempt to regulate such activity as murder; in fact, society doesn't regulate such behavior at all. A further downfall to regulation is that calling a sexual assault on an avatar "rape" may diminish the meaning of the crime in the real world. In the area of child pornography, however, the interests of real children can be implicated, directly and indirectly, and the policy of protecting children necessitates regulation of virtual child pornography. To do so is not to diminish the crime of child pornography occurring in the real world but only to recognize that the limited nature of "harm to real children" adopted by *Free Speech Coalition* will result in harm to real children as technology continues to evolve.

<sup>95</sup> See Terdiman, *supra* note 6.

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production of child pornography, are nonetheless important to recognize in order to serve the interest of protecting children.