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Will Virtual Reality Transform Real-World Laws?

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Star Trek: The Next Generation introduced the holodeck: a virtual reality (VR) apparatus utilizing hard-light holograms that create a virtual world for Starfleet personnel to recreate environments and compete in recreational activities. The holodeck was one of our first glimpses of VR. But VR is no longer just science fiction. Consumer-targeted VR devices allow users to enter lifelike worlds to battle dragons, visit other planets, and compete in games with other users from around the world without ever leaving the living room.

Entrepreneurs are looking at how VR technology might improve the classroom, expand tourism, and revolutionize TV. Hollywood producers have been experimenting to enable audiences to participate in movies instead of passively watching them. The virtual world is expanding, but can the real world's laws keep up?

We know that crimes can occur in cyberspace, but how do you prosecute a crime in VR? If a VR user spends hours designing a virtual car, can someone be prosecuted for hacking into the user's device and deleting the vehicle? If a VR user plays a fighting game with another VR user and a virtual punch causes a real-life injury, are we prepared to charge the user with assault? And if the courts agree that these are indeed crimes, how does the state meet its burden of proof when criminals behind a computer have the

advantage of greater anonymity? As VR becomes more interactive and mimics real life, the courts will need to decide how virtual crimes should be prosecuted.

Legal concerns also exist with respect to civil law. What if a VR user places a trademark-protected logo on a virtual shirt that the user wears in the virtual world? Under US trademark laws, the logo must be used “in commerce” for a plaintiff to establish an infringement claim. But what if that user begins “selling” that shirt to other users in exchange for virtual coins? The analysis becomes more nuanced. If a program allows participants to walk around as a user-created avatar, can someone be liable for false light, defamation, or identity theft claims if the avatar looks identical to someone from the real world? Your virtual Justin Bieber could make you liable for real-world tort claims.

Finally, VR software could be programmed to collect information relating to the user’s personality, health, and finances. Companies that engage in this information collection will need to take adequate precautions to safeguard that information from inadvertent disclosure or breaches. Given the different ways that information could flow in VR, protection of that information could prove nearly impossible, and the courts may take differing views of a user’s expectation of privacy in VR.

Just as data breaches, identity theft, and malware were inconceivable decades ago, VR will present a host of legal controversies, and we must be ready to adapt our laws. Right now, these controversies may reside only on *Starship Enterprise*’s holodeck, but tomorrow they could easily end up in our courtrooms. Beam me up, Scotty.

Authors



