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Screen Captures of Public Buildings in Second Life: The position under Copyright Law

Virtual Worlds have been a hotbed of legal disputes since the turn of the new millennium, some resulting in legal actions being commenced in US courts in the areas of copyright and trade mark law. This paper will focus on the virtual world Second Life and it will examine the legal status of screen captures of public buildings within Second Life under US copyright law.

Residents of Second Life are generally free to live and roam about inside this virtual world which its creator Linden Labs has disclaimed to be a game. Instead, Second Life has been touted as a social, three-dimensional world where one can live, work, and play. Residents in Second Life can create and build castles, mansions and skyscrapers to match. In fact, Anshe Chung, the first avatar in any virtual world to make US\$1million entirely from online activities, made her fortune in Second Life from designing and creating highly original and aesthetically pleasing buildings and then selling them to willing buyers.

As residents inhabit Second Life, they often do make screen captures of their online adventures for a variety of reasons such as to share with friends, or to post on blogs, or to complain about some inequity. The screen captures inevitably involves making a copy of an artistic work, which is protected under copyright law. However, contained in *17 U.S.C. § 120(a)* is an absolute privilege to capture and use images of architectural works visible from public places. This paper will explore the applicability of this section to screen captures in Second Life that occur in public places of buildings.

The privilege that is enjoyed under § 120 will only apply if the pictorial representation is of an “architectural work that has been constructed.” The meaning of this will be considered within the framework of the copyright statute, including Congressional deliberations, and the existing case law. It will be argued that it can potentially be interpreted to encompass buildings within Second Life. Section 120 also requires that the building must be “located in or ordinarily visible from a public place.” The concept of public place will be analyzed and an argument will be made that this too can be satisfied.

Having concluded the applicability of the § 120 privilege, the paper will close by evaluating the social and policy ramifications of such an interpretation.