

The Global Dimensions of Virtual Work

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INTRODUCTION

A number of China's new "factories" feature computer workers, typing and clicking away, playing video games, collecting coins and swords, and fighting monsters.¹ Known as "gold farmers," these workers are paid to harvest virtual treasures for online gamers in the developed world. These First World gamers want to advance quickly within the game and, tired of the repetitive tasks necessary to build a high-level character, would prefer to pay others to do the work.² As a result, gold farming operations have appeared in many Third World countries, where labor costs are low.³ For example, a company named Blacksnow opened operations in Tijuana, Mexico, paying Mexican nationals dollars a day to kill dragons and obtain objects in Mythic Entertainment's online Camelot game.⁴ Acting as an intermediary, Blacksnow later resold these virtual objects on eBay⁵ and other online exchange sites to high bidders in First World countries, thereby taking advantage of lower labor costs in developing nations.⁶ Another model that uses these relative differences in wages is to have Third World computer workers "play" the characters of First World gamers while they sleep.⁷ Workers in Third World countries are playing these online games not as entertainment, but as a means of making a living.⁸

Gold farming highlights several themes that are becoming more salient in labor and employment law, including labor value arbitrage,⁹ globalization,¹⁰ and the changing nature of work in response to technology.¹¹ As more work enters cyberspace, takes place in virtual

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¹ David Barboza, *Ogre to Slay? Outsource it to Chinese*, N.Y. TIMES, Dec. 9, 2005 at A1.

² According to another recent article on the Chinese gold farmers, there are now three models for reaping the bounty of the virtual world. In the traditional, more typical model which is the one described above, the gold farmers use their experienced characters in order to perform repetitious tasks, garner valuables, and then, through intermediaries, sell the virtual property in exchange for cash. In the second model, called "leveling," a wealthy player will pay the gold farmers to play his character twenty-four hours a day, allowing the character to become vastly powerful in a short period. Finally, the third model involves assembling a team of Chinese players, who guide the first-world player to the highest levels, and then let the first world player receive the most valuable objects (which cannot be sold). See Julian Dibbell, *The Life of a Chinese Gold Farmer*, N.Y. TIMES, June 17, 2007, § 6 (Magazine), at 36.

³ *Id.*

⁴ When Mythic Entertainment attempted to shut down Blacksnow's trading site, Blacksnow brought suit in the Central District of California, but the suit was settled before trial. Complaint, Blacksnow Interactive v. Mythic Entm't Inc., No. 02-00112 (C.D. Cal. Filed Feb. 5, 2002). See also Richard Raysman & Peter Brown, *Novel Legal Issues in Virtual Property*, 234 N.Y.L.J. 3 (col. 1), Aug. 9, 2005 (describing complaint and legal issues surrounding complaint).

⁵ www.ebay.com (well-known internet auction website).

⁶ Class Action Complaint, Hernandez v. Internet Gaming Entm't, Ltd., No. 07-21403-Civ (S.D. Fla. filed May 31, 2007), available at 2007 WL 1799038. In this pending lawsuit, users who played the game World of Warcraft sued an online auction website that employed gold farmers, alleging that the monetization and sale of virtual property devalued the currency in the world and removed scarce resources. The complaint alleged that "IGE gold farmers are often citizens of developing third world countries who spend up to 14 hours per day, or more, logged into World of Warcraft collecting resources and world of Warcraft gold." *Id.* at 8. See also Complaint, Blizzard Entm't, Inc. v. In Game Dollar, L.L.C., No. 07-0589 (C.D. Cal. Filed on May 22, 2007) (terminated after permanent injunction granted, Jan. 28, 2008); Complaint, MDY Indus., L.L.C. v. Blizzard Entm't, Inc., No. 06-2555 (D. Ariz. 2006 filed on Oct. 25, 2006).

⁷ See Dibbell, *supra* note [].

⁸ David Barboza, *Video Game Sweatshops? Chinese Players Toil for Virtual Booty*, INT'L HERALD TRIB., Dec. 9, 2005, at 1.

⁹ See, e.g. George S. Geis, *Business Outsourcing and the Agency Cost Problem*, 82 NOTRE DAME L. REV. 955, 972 (2007) (describing how outsourcing takes advantage of labor value arbitrage).

¹⁰ See, e.g. SAMUEL ESTREICHER & MIRIAM A. CHERRY, GLOBAL ISSUES IN EMPLOYMENT LAW (2008) (including themes such as outsourcing, contract labor, immigration and the "brain drain" in a textbook supplementing traditional United States employment law course with an international perspective).

¹¹ See, e.g. Katherine V.W. Stone, *From Widgets to Digits* (2006); Miriam A. Cherry, *No Longer Just Company Men: The Flexible Workforce and Employment Discrimination*, 27 BERKELEY J. LAB. & EMP. L. 209 (2006) (reviewing Professor Stone's book).

worlds, and collapses traditional nation-state barriers, we are entering a new era of “virtual work.” In this article, I use “virtual work” as an umbrella term to encompass work in virtual worlds,¹² crowdsourcing,¹³ clickworking, even sweeping in, to some degree, the commonplace telecommuting and “mobile executives” that have become ubiquitous over the past decade.¹⁴ Today, millions of people worldwide entertain themselves or supplement their incomes – or both – by working within virtual worlds such as Second Life or casually “clicking” to make a few dollars for simple tasks on websites like Amazon.com’s Mechanical Turk.¹⁵ One economist, Edward Castronova, has estimated that the economy of Sony’s game EverQuest and its world, Norrath, has a GNP, per capita, equivalent to that of Bulgaria.¹⁶ In numerous worlds, workers hold various jobs that, in the words of leading commentators, make it possible to “work in a fantasy world to pay rent in reality.”¹⁷ In addition to work in virtual worlds, we are also seeing the rise of crowdsourcing and clickworking, in which complicated tasks are broken down and distributed to thousands of workers throughout cyberspace, then later consolidated into a finished product.¹⁸

The advent of virtual work simultaneously provides immense promise and peril for workers in the new digital economy.¹⁹ New technology allowing collaboration can provide remarkable opportunities for workers and employers alike. Traditional limitations on collaboration – of travel, of meeting, of commuting – can be minimized or reduced. Employers can use virtual spaces to make contacts and recruit talent, without spending money on transportation.²⁰ Recently, in his book, *The Wealth of Networks*, Professor Yochai Benkler has described the potential for collaborative work in cyberspace, especially in a non-market setting.²¹ Certainly, the possibility of matching workers and jobs in cyberspace creates more opportunities and more efficient labor markets.²² In addition, employees have used virtual worlds as part of their protected right to organize and to protest.²³ For example, in September, 2007, over 2,000 employees protested IBM Italy’s pay package by appearing at IBM’s headquarters in Second Life.²⁴

Simultaneously, virtual work presents many of the same enduring problems that workers’ rights advocates have struggled with over the years. Many of the gold farming operations and other types of virtual work have been criticized in the press as creating new “virtual sweatshops.”²⁵ For years corporations have engaged in races to the bottom, not only

¹² See notes [] – [], *infra*, and accompanying text.

¹³ See notes [] – [], *infra*, and accompanying text.

¹⁴ Kevin Courtney, *Con Text M-Worker*, THE IRISH TIMES, April 1, 2008, at Features 17, available at 2008 WLNR 6100967.

¹⁵ EDWARD CASTRONOVA, SYNTHETIC WORLDS THE BUSINESS AND CULTURE OF ONLINE GAMES 2-3 (2005).

¹⁶ *Id.* at 19-20.

¹⁷ F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CAL. L. REV. 1, 11 (2004).

¹⁸ Jeff Howe, *The Rise of Crowdsourcing*, WIRED, June 2006, at 176, 178-79 (using term “crowdsourcing” to describe work performed with the aid of contributions from diverse groups of users on the internet).

¹⁹ Robert D. Hof, *The End of Work as You Know It*, BUS. WK. 80, Aug. 20, 2007, at 80 available at 2007 WLNR 15875667 (“Will this be a new world of empowered individuals encased in a bubble of time-saving technologies? Or will it be a brave new world of virtual sweatshops, where all but a tech-savvy few are relegated to an always-on world in which keystrokes, contacts, and purchases are tracked and fed into the faceless corporate maw?”).

²⁰ See, e.g. Gabrielle Monaghan, *A Virtual Way to Find Real Talent*, SUNDAY TIMES, March 16, 2008, at 19 (describing KPMG and Accenture recruiting events on Second Life, and the fact that the Manpower recruiting agency has also opened an island within Second Life); Joel Dresang, *Manpower Opens Office in Online Virtual Society*, MILWAUKEE J. SENTINEL, July 13, 2007 at D1.

²¹ See, e.g. YOCHAI BENKLER, THE WEALTH OF NETWORKS 9 (2006) (“As collaboration among far-flung individuals becomes more common, the idea of doing things that require cooperation with others becomes much more attainable, and the range of projects individuals can choose as their own therefore qualitatively increases. The very fluidity and low commitment required of any given cooperative relationship increases the range and diversity of cooperative relations people can enter, and therefore of collaborative projects they can conceive of as open to them.”)

²² ALAN HYDE, WORKING IN SILICON VALLEY: ECONOMIC AND LEGAL ANALYSIS OF A HIGH-VELOCITY LABOR MARKET (2003).

²³ 29 U.S.C. §151-169 (2000).

²⁴ *On Strike, Virtually*, THE ECONOMIST, March 15, 2008, at 87, available at 2008 WLNR 5068500.

²⁵ See Barboza, *supra* note []; Cf. Wendy Duong, *Ghetto’ing Third World Workers with Hi-Tech: Industrial Application of Artificial Intelligence and its Effect on Foreign Direct Investment in the Third World – Exploring Regulatory Solutions Through an Emblematic Case for the New Economy*, 21 TEMPLE INT. & COMP. L. J. ___ (2008) (forthcoming), available at <http://ssrn.com/abstract=1055461>, (last visited August 6, 2008).

in selecting the jurisdiction of incorporation that will govern their internal corporate affairs,²⁶ but also to find the jurisdictions with the cheapest labor and the least regulation of employment relationships.²⁷ While such behavior is economically rational, whether such a race is the best system for sustainable development and worker's (also rational) interests, is another question altogether. The concern about virtual work is that it will lead to further acceleration of the race to the bottom and ultimately the further erosion of worker's rights and benefits.²⁸

In the new information economy, this phenomena is no longer about manufacturing or factory work migrating overseas.²⁹ Instead, it is jobs in the technology and information sectors that are being affected.³⁰ Law, medicine, and other forms of skilled work are now seeing some of the changes that used to have an impact on the manufacturing sector.³¹ However, the larger issue is a concern for all workers regardless of the First-World / Third-World divide. In her book, *From Widgets to Digits*, Katherine Van Wezel Stone heralded the excitement of new technology; a knowledge economy that would free workers from "old economy" tasks and manual labor. The danger, however, is that professional tasks are increasingly broken down to their least skilled denominator, which runs counter to technology's original promise.

²⁶ See, e.g. Brett H. McDonnell, *Getting Stuck Between Bottom and Top: State Competition For Corporate Charters In The Presence of Network Effects*, 31 HOFSTRA L. REV. 681 (2003) (describing the decision process of choosing a jurisdiction of incorporation).

²⁷ See, e.g. Raul Delgado Wise & James M. Cyper, *NAFTA, Labor, and the National State: The Strategic Role of Mexican Labor under NAFTA: Critical Perspectives on Current Economic Integration*, 610 ANNALS 120 (2007) (discussing the impact of the North American Free Trade Agreement on outsourcing); Keith Woffinden, *Surfing the Next Wave of Outsourcing: The Ethics of Sending Domestic Legal Work to Foreign Countries Under New York City Opinion 2006-3*, 2007 B.Y.U. L. REV. 483 (2007) (discussing the legal and ethical implications of outsourcing legal work); Christina Laun, *The Central American Free Trade Agreement and the Decline of U.S. Manufacturing*, 17 IND. INT'L & COMP. L. REV. 431 (2007) (considering impact of Central American Free Trade Agreement on U.S. manufacturing industries); Archie A. Alexander III, *American Diagnostic Radiology Moves Offshore: Where Is The "Internet Wave" Taking This Field?*, 20 J. L. & HEALTH 199 (2006/2007) (analyzing outsourcing of medical services).

²⁸ Katherine Van Wezel Stone, *To The Yukon and Beyond: Local Laborers In A Global Market*, 3 J. SMALL & EMERGING BUS. L. 93 (1999) (describing race to the bottom phenomenon within global labor markets).

²⁹ See Stone, *supra* note [], at 5.

³⁰ See e.g., Information Technology Association of America (ITAA), *The Impact of Offshore IT Software and Services Outsourcing on the U.S. Economy and the IT Industry*, available at <http://www.globalinsight.com/About/PressRelease/PressRelease855.htm>.

³¹ See Alexander, *supra* note [].