Common Problems in Virtual Classrooms

There is no mainstream form of technology that mimics reality and enables human interaction the way that a virtual world does. But even here, as educators have found, a teaching presence is vital in order to optimize student retention of information (Ferguson & Tryjankowski, 2009). Assembling students in a physical environment, however, is not the only way to inspire group involvement. Mobilizing people together in a virtual world also promotes collective action and participation as a group (Noveck, 2006).

In this chapter I will attempt to answer several key questions about the legal issues that higher education institutions might face when teaching in virtual classrooms. I will focus on these main questions:

- What intellectual property does a virtual classroom create, and how should it be protected?
- If students develop property within the virtual classroom, should it belong to the student or university?
- If multiple students create a property within the virtual classroom, who is the owner of that property?
- Are students’ avatars speech, image, and likeness protected?
- Can virtual classrooms be video or audio recorded without consent?
Can a university distribute student educational records without permission?

I will consider these questions individually by means of the laws and policy of the United States, England, and China. Although virtual worlds are rife with issues not addressed by legislation or tested by courtrooms, this chapter offers a starting point for educators who implement virtual worlds in their modules.

Contractual Obligation: Accessing the Virtual World

In the American, English, and Chinese legal systems, almost all rights related to virtual worlds used in post-secondary education can be established or revoked by contract, except for certain educational requirements and non-economic rights that I analyze later in this chapter. Normally, participation in a virtual world is a two-way transaction between the company that provides the virtual world and the person wishing to access it, called a user. A user agrees to the terms and policies of the virtual world in exchange for using the virtual world in whatever manner is desired within the confines of the program. When land in the virtual world is rented or sold to a third party, like a university, that land is turned into private property. A user aiming to visit a private property must adhere to the terms and policies of both the company hosting the virtual world and the third party that has a legal interest in the virtual space. A university may impose punishments for violation of their virtual world policies, including banishment from its virtual school grounds and sending a report to the platform owner that can result in termination of a user’s account (e.g., Texas Women’s University, 2012). In the United States, England, and China, the terms and conditions for passage into virtual worlds are found in the two leading virtual world contracts: The End-User License Agreement (EULA) and the Terms of Service (TOS, or sometimes called “Terms of Use”). How does a student gain access to and agree to these legal documents?

The United States

In order to participate in a virtual world or use any virtual item, a user must be either its personal owner or receive permission from its owners. Authorization may come in the form of a license, which is an agreement that expressly gives permission from the owner of rights in a property to use that property. Similar to businesses that run virtual worlds, educational institutions may have an interest in preserving either ownership or licensing rights of student-created...
work in order to use it in other works, promotional materials, and advertising for the university’s virtual teaching environment. Educational institutions that provide their virtual worlds instead of utilizing an existing one may secure licensing rights in all parts of the virtual learning environment by placing appropriate language within the EULA and TOS.

As the platform owner, the university may exhibit the EULA and TOS in two forms. First, the contracts may be in a click-through agreement, which is an agreement that pops up and requires the user to actively click on a button indicating acceptance of the terms before he or she may utilize the computer program (see In re: 2703(d) Order 2011). Second, a platform owner may post a link that leads to the EULA and TOS so that potential users can examine the documents at their convenience. Both ways assign the obligation to read and agree to the documents to the user (see Swift v. Zynga Game Network, Inc., 2011). In general, courts will enforce a TOS or EULA. There are exceptions, however, particularly in cases where the documents are too one-sided and accommodating to the platform owner but not the participants of the virtual world (see Newton v. American Debt Services, Inc., 2012).

Platform owners should not craft a TOS that is so onerous it is unlikely to be honoured by a court. For example, if the university, acting as platform owner, has a TOS that contains a heavy-handed arbitration clause restricting the type of statutory remedies that students may seek and other unbalanced provisions, a court may rule the TOS unenforceable against the students because it is “unconscionable,” which is legal term that means “extremely unfair” (Garner, 2006; see Newton v. American Debt Services, Inc., 2012). Conversely, if a TOS commits remedies to both the university and the student, the courts will likely support the instrument (see Evans v. Linden Research, Inc., 2011).

**England**

England is similar to the United States in that statutory law and common law on contracts wholly govern virtual worlds. Though the EULA and TOS have not truly been tested in English courts, the documents both remain the industry standard (Grossman, 2008). The documents may be presented as a “click-through” license, which is also a valid form of conveying a virtual world’s TOS (Sas Institute Inc. v. World Programming Limited, 2010).

Unambiguous TOS and EULAs that provide reasonable notice to all voluntary participants are unlikely to be deemed substantively unconscionable. English courts have typically applied the doctrine of unconscionability to a few areas of law that are traditionally connected to real property (Angelo & Ellinger,
The doctrine seems to only bear upon negotiated contracts. It would be difficult to find English unconscionability pertinent to standard form contracts like click-through agreements or EULAs because of another requirement of an unconscionable bargain: The party drafting the agreement knows, or ought to know, of the other party’s disadvantage, such as lack of business acumen or income (see Fineland Investments Limited v. Janice Vivien Pritchard, 2011; Phillips, 2010).

English courts do frequently exercise other equity-based contract principles that exist in American law, such as prohibiting contracts that have one-sided terms (see Boustany v. Pigott, 1995). The incorporation of equitable terms into agreements is further strengthened by the Unfair Contract Terms Act 1977, which directly applies to the terms of a standard form contract such as a click-through agreement. Therefore, university administration should include fair terms in their TOS and EULA that equally affords relief to all parties.

**China**

Contracts supported by national legislation reign over the law of virtual worlds in China. The National People’s Congress enacted three laws: The Civil Law, Secured Interests Law, and the 1999 Contract Law (Zimmerman, 2010). These acts uphold and establish commercial contracts, including the EULA and TOS contracts, which are also embraced for Chinese virtual worlds. For example, China’s version of Second Life, called HiPiHi, has a click-through agreement which a player must agree to before finishing installation of the virtual world software. Enabled by national legislation, a people’s court or administrative agency has the power to declare a contract null and void for being obviously unfair. Therefore, to mitigate risk and err on the side of fairness, contracts should contain remedies equally available to all parties.

**Intellectual Property in the Virtual Classroom**

A virtual classroom is made up of many bits of code that translate into images within a virtual room. Code may appear as desks, tables, blackboards, chairs, signs, a clock, doors, and avatars that represent students and faculty. Items designed and placed in the virtual world by the software program clearly belong to the platform owner, but who owns new items created by the students and faculty members that are assimilated into the program?

Similar to the new media journalism class currently offered at the University of North Carolina at Pembroke, imagine Professor W, a professor at University X, is offering a class on journalism within a virtual classroom. Also assume that
the journalism classroom is hosted in the online virtual world Second Life, which allows players to retain intellectual property rights to assets they create within the virtual environment, and University X has an agreement with the creators of Second Life, Linden Labs, that allows the university administration use of the world for its community and the right to manage their classrooms in whichever manner they choose. The platform owner, here Linden Labs, provides the floor of rights within the world. For example, Section 7.3 of Second Life's TOS states that users are granted a license to engage in certain activities, such as taking screen shots of publicly accessible areas (Linden Research, 2010).

Not all virtual space is deemed public. A landowner or renter of private virtual property may turn their space into a private area by utilizing inworld tools to restrict access to their space. Thus, if University X is turned into a private space, and it wishes to enforce stricter rules on its users, such as demanding that its users obtain permission to take screen shots of the classrooms, it may. However, by adapting an existing virtual world, University X may not require that same permission from Linden Labs, because the university is contractually bound by the platform owner's EULA, TOS, and other policies. Here, Second Life expressly states in Section 7.2 of its TOS that any content submitted or published in Second Life automatically grants Linden Labs the right to use a copy of that work in any way it desires. Users should note that ownership of the work is not affected, only use. Therefore, University X would not be able to prevent Linden Labs from using screen shots of the classroom in promotional materials and advertising. Apart from the platform owner's licensing rights, who owns materials in a virtual classroom, and who is permitted to use them?

**The United States**

Copyright is the primary protector of virtual worlds. Under the United States Copyright Act of 1976, the virtual world code and all of its elements are copyright protected as literary works. Going back to the hypothetical, suppose students in the journalism class are free to contribute content to the virtual classroom. This freedom is realistic given that many Second Life users create new objects using the tools in the software program or write code from scratch (Ondrejka, 2006). Imagine Student Z creates a PowerPoint presentation of original, currently unpublished research, uploads it to the private virtual classroom, and presents it to the class. Who owns and may use that new virtual item?
The architect of a new virtual item can classify the code behind it as a literary work, or the visual item itself as an audiovisual work, and therefore can bar others from a legion of uses, such as to use the item in trade or advertising (Copyright Act, 1976). If multiple students intentionally joined Student Z in creation of the PowerPoint presentation, all collaborators would be co-owners of that virtual item. As I previously mentioned, the university has its own set of policies and procedures governing the behaviour of faculty and students even in the virtual world. Therefore, University X may place the proper licensing language in their legal documents to establish permission to use a student-created work.

If faculty or other students in the journalism classroom desire to use Student Z’s PowerPoint presentation, but have not gained express written permission to do so, they may nevertheless be granted permission under educational fair use. The United States Copyright Act (1976) dedicates a section for “fair use” of protected work, which means in particular circumstances copyrighted material may be used without permission or compensation. Courts emphasize that there is a presumption of unfairness for one who uses another’s work for monetary gain (Harper & Row Publishers, Inc. v. Nation Enterprises, 1985). However, a court might not conclude educational fair use for a professor, even when the copyrighted material is confined to only educational purposes and given to students for free (see Marcus v. Rowley, 1983). The safest route for adopting another’s work is by obtaining written permission from the creator.

Normally, copyright exemptions for non-profit educational institutions exist for only the performance or display of a work during “face-to-face teaching activities” (Copyright Act, 1976 § 110[1]). This means distributing, reproducing, or making derivatives of a work are strictly prohibited (Copyright Act, 1976). The face-to-face requirement alone would displace eligibility for any non-profit educational institution that employs virtual classrooms. However, there are exemptions for use of copyrighted works transmitted digitally if the school meets a series of limiting criteria, including that the transmission of the work is only received by students enrolled in the class (Copyright Act, 1976). Thus, for example, Professor W may show another virtual class Student Z’s PowerPoint presentation, but may not distribute it, make copies in whole or in part, or create a new work from it, like a poster.

What if Student Z integrates a modified version of the school’s name and logo into the PowerPoint presentation without permission? In all three legal systems, the university’s name and logo is protected by trademark even in the virtual world (Lanham [Trademark] Act of 1976 [US]; Trademark Law 1982 [CN];
Trade Marks Act 1994 [UK]). Fair use also applies to trademarks. Determining fair use is a test for the courts, and depends on how different factors are weighed. Students cannot weave modified versions of a university’s name or logo into their work if the public believes that the university controls and endorses the work (Villanova Univ. v. Villanova Alumni Educ. Found., 2000). A 2011 Alaskan case demonstrates that even if the scope and size of the application is minimal, such as a student placing the protected logo on a single slide of a PowerPoint presentation in one class in a secluded state, a court may hesitate to find educational fair use (see Campinha-Bacote v. Rearden, 2011). Even so, a court might find educational fair use for Student Z’s work if its use is for productive, educational purposes (Rubin v. Brooks/Cole Publishing Co., 1993). Students should seek written permission from the trademark owners, or at a minimum, restrain the use of the work to productive, educational purposes only.

*England*

Similar to American copyright law, English domestic law states that the codes that make up the entire virtual world and its “substantial parts,” including clip art, graphical artistic work, sounds, and films contained within the virtual world are copyright-protected as literary works (Copyright [Computer Programs] Regulations 1992; Copyright, Designs and Patents Act 1988). Usually, written consent from the creator is needed to make copies of a copyrighted work, or to use trademarks (Copyright, Designs and Patents Act 1988; Trade Marks Act 1994). If Student Z plasters multiple slides of her PowerPoint presentation with a third party’s name and logo, she must obtain prior written approval from the third party to add it (see Codemasters Software Company Ltd. v. Automobile Club De L’Ouest, 2009).

England’s version of fair use is referred to as “fair dealing” (see Newspaper Licensing Agency Ltd. v. Meltwater Holding BV, 2011/2012). Professors and students may use copyrighted work without compensating or obtaining permission if the creator is sufficiently acknowledged and the work is used for non-commercial research purposes (Copyright, Designs and Patents Act 1988). Similarly, criticism and review of protected works fall under this exception provided the works are already in the public, and the creator is sufficiently acknowledged by name and other identifying details (Copyright, Designs and Patents Act 1988; see Newspaper Licensing Agency Ltd. v. Meltwater Holding BV, 2011/2012).

The Copyright, Designs and Patents Act 1988 also lists copyright exemptions specifically for educational establishments, teachers, and students. Professors and students may make copies of protected work for non-commercial purposes...
with sufficient acknowledgement of the creator (Copyright, Designs and Patents Act 1988). Student Z’s addition of the university’s name and logo in her virtual item might also be permitted as expressive and cultural fair use (Naser, 2009). While some English courts have stated that using a protected work for non-commercial research is likely to raise less problems than using a work in criticism and review, absent written permission, students and faculty run the risk of a court rejecting their use as fair dealing or falling under the educational establishments exemption (see Forensic Telecommunications Services Ltd v. Chief Constable of West Yorkshire, 2011).

China

Virtual worlds are protected under two laws in China. First, the entire virtual world is sheltered under the Copyright Law of the People’s Republic of China (2010; hereafter Copyright Law) as “computer software,” while graphic images and characters are protected as art. Second, the virtual world may acquire additional copyright protection because it qualifies as a computer program under the Regulations on Computer Software Protection (2001). China’s copyright law obligates users to acquire written permission from the creator to use or make copies of her or his work (Copyright Law, 2010).

Chinese law also provides general educational fair use that allows teachers, researchers, and students to use copyrighted work without permission or paying a fee. Specifically, Article 22 of the Copyright Law (2010) permits reproductions of publications in small quantities for only “classroom teaching or scientific research” provided the creator’s non-economic rights (moral rights) are preserved, and his or her copyright rights are not affected by the distribution (Copyright Law, 2010, ch. II, § 4, art. 22[6]; Schlesinger, 1995). Therefore, going back to my example, if Professor W desires to distribute copies of Student Z’s PowerPoint presentation, then the professor should print only enough copies for the class, and each copy of the work should contain Student Z’s name and other identifying factors. The principles of fair use also apply to trademarks. Student Z’s unauthorized reproduction of University X’s trademarks within her virtual item might be considered a fair use of the school’s trademarks for education purposes (Young, n.d.). Unlike the laws of England and the United States, China does not have an exemption specifically for educational institutions, likely because the Chinese government places heavier emphasis on criminal liability for copyright infringement and Internet copyright infringement.
Avatars or Virtual Representations of Users

Avatars are the graphic representations of users. One way to build one is for a user to select from a set of stock avatars that are contained in the virtual world software. As part of the software, these stock characters belong to the platform owner. However, avatars can also be built from scratch. Normally, a character belongs to its creator, but ownership rights may change depending on the TOS of the platform owner and university. An avatar that is distinctive, or conversely, that closely resembles an existing person’s appearance may rise not only to the level of copyright protection but also several other types of protection.

Character disputes may arise when one person adopts the name and appearance of another person. If an imposter is simply creating trouble within the virtual world without any monetary gain, generally the only form of redress is the platform owner’s internal policies. For example, if Student Z built an avatar that matches her physical appearance, her discovery of another student in her journalism class using an identical avatar with her name attached to it is certain to cause a disturbance. Student Z may seek refuge within Section 3.2 of Second Life’s TOS, which prohibits attributing a name to a character that will cause confusion and mislead others as to a user’s identity (Second Life, 2012).

A dispute may also emerge if the university makes a copy of a student’s avatar and uses it in advertising and promotional materials without the student’s written permission. For instance, if the university took screen shots of Student Z’s avatar and placed the images on flyers, subway posters, and banners, does Student Z have any arguments beyond copyright?

The United States

For the legal systems of the United States and England, generally, characters are not afforded separate copyright protection from a work as a whole unless they are distinctive (Zecevic, 2006; Olson v. National Broadcasting Co., 1988). On certain occasions, a student or faculty member may assert her or his right of publicity (publicity rights) protection to ban third parties from exploiting the avatar for pecuniary gain (Pollack, 2011). Publicity rights are defined as the inherent right not to have one’s image and likeness used for another’s financial gain without authorization (see Garon, 2008). These rights are rooted in state statutory law or common law and thus vary by state (Pollack, 2011). When the avatar has the image and likeness of a specific person in a setting comparable to his or her ordinary occupation, and is conducting work-related tasks that are regularly done in his or her real-world occupation, publicity rights may prevent others
from commercial use of that person’s avatar (No Doubt v. Activision Publishing Inc., 2011). Arguably, Student Z may acquire publicity rights that expand to her avatar if it closely resembles her image and likeness, the avatar is solely in the role of a student, and it carries out tasks that the student usually performs.

The bulk of publicity cases involve celebrities. Yet some states have passed privacy rights laws that give ordinary people nearly the same protections (e.g., New York Civil Rights Law, 2011). Privacy rights defend against third party exploitation of a person’s name and likeness, are inclusive of all people, and are codified in either a state statute or by state tort common law (see Alfano v. NGHT, 2009; e.g., New York Civil Rights Law, 2011). Although no definitive law or ruling speaks directly to avatars of ordinary people in virtual worlds, similar to characters in a video game, in the future, avatars based on people may have the right to privacy (see Reece v. Marc Ecko Unltd, 2011). Therefore, the state that has jurisdiction over the dispute will play an important part in any publicity rights or privacy rights cases.

Millions of people engage in commercial activities within virtual worlds (Lastowka & Hunter, 2004). In the absence of a contract surrendering all legal rights, a student may earn trademark protection for her or his avatar if the avatar operates like a brand to sell a good or service. Contrary to publicity rights, trademark law does not demand that the image match the user’s appearance (Trademark Act of 1988). For example, if Student Z constructs a distinctive avatar for journalism class but then uses that avatar in multiple virtual worlds and attains a reputation as a merchant who executes business transactions there, her avatar may secure trademark protection if the character functions as a brand. Student Z can build a higher legal wall by filing a trademark application for her avatar with the United States Patent and Trademark Office (USPTO; Crittenden, 2008; USPTO, 2011). Trademark law can also prohibit third parties from adapting the avatar for a myriad of objectives, such as advertising and trade. A university can eliminate almost all of these legal issues and secure economic use of all virtual items and avatars within the virtual world by inserting the proper language within the EULA, TOS, or other school policy.

**England**

England does not recognize publicity rights, and though it created privacy laws related to data protection, the absence of a domestic, general privacy law is widely known (Love v. Sanctuary Records Group, 2010; Parliament UK, 2008). Therefore, contrary to the publicity rights and privacy rights in the United States, there are no legal shelters for a person’s image and likeness or that
person’s avatar in England. Characters have a greater chance of receiving protection as a symbol in business. It is possible that this legal shield will extend to an avatar used in commerce the way that representations of fictional characters and names are currently trademark-protected (Leaffer, 1993–1994). To illustrate this point, the name and representation of Superman, a fictional character that has a look and name that is distinctive, are afforded trademark protection (UK Intellectual Property Office, 2012). Thus, presently, copyright law is a student’s best form of redress for her or his custom-made avatar.

**China**

Similar to England’s stance, there are no publicity rights or general privacy rights in China (Liu, Yao, Jiao, & Jie, 2011; Jingchun, 2005). Chinese law does provide a right of “portrait, name and reputation” for people, which so far has not been argued to apply to avatars (General Principles of the Civil Law of the People’s Republic of China, 1986; Groscost, 2008). Given the attention and impact that one particular case involving hurdler Liu Xiang had on Chinese law, if in the future avatars elevate to the same status and recognition as the image of a well-known person, the argument may be made that characters also qualify for the right to portrait protection (Levine, 2007).

Analogous to the trademark law of England and the United States, representations and names of fictional characters may be trademarked. For example, the Teletubbies name and representation have registered trademark protection in China because both the name and representation are symbols for a specific children’s television show, dolls, and other children’s goods (Yi, 2010). Along that line of reasoning, if Student Z’s avatar is associated as a symbol in commerce for goods or services and is distinctive, it may be eligible for trademark protection (Trademark Law 1982). Outside of copyright law, a user’s best chance of gaining legal protection for their avatar is seeking trademark protection by establishing their avatar as a brand.

**Recording the Virtual Classroom**

In a virtual classroom, a learner participates in one of two ways, depending on the platform and personal preference. Either she can speak through a headset directly inworld, which makes her speech audible within the virtual classroom. Alternatively, she can write, which makes her responses appear as typewritten text on the screen. In order to review class later, the student or teacher may wish to record the class. Is permission required to record the classroom? Figure 13.1 provides an example of how text may appear in a virtual world.
Figure 13.1 Example of how text may appear in a virtual world (virtual classroom in Freie Universität Berlin in Germany). Used with permission from Undine Frömming.

The United States

Normally, lectures, syllabi, and other tangible educational materials that are furnished to a class are copyright protected by the professor who is the author of the materials or the university who is the professor’s employer. Scholars differ in opinion as to whether the university owns the copyright for these materials (Patry, 2011). In either case, recording the virtual classroom by any means is creating a copy of these materials without authorization. There are exceptions to this general rule (Copyright Act of 1976). The Copyright Act (1976) permits a recording solely for personal use (see Lewis Galoob Toys, Inc. v. Nintendo of America, Inc., 1991). This means a student may record the virtual classroom if she or he is the only person accessing the recording. Distribution of the student’s recording is strictly prohibited, unless considered otherwise under the copyright fair use exceptions. A professor may easily retain some rights and permit others by adopting a free, ready-made license from Creative Commons, a non-profit organization that advocates for universal access to research and education.

England

Analogous to the copyright law of the United States, recordings are classified as digital copies of a work. Thus, for example, creation of a video recording is a violation of that owner’s rights (Copyright, Designs and Patents Act 1988). Various methods of capturing the classroom lead to the same result. For instance, if Student Z desired to take screenshots of the journalism virtual classroom, she
would still be in violation of the university’s rights. English common law protects the frames or “images displayed to the user” in video games, and would likely protect the frames of a virtual world as well (Sas Institute Inc. v. World Programming Limited., 2010; Nova Productions Ltd v. Mazooma Games Ltd, 2007). Student Z should avoid gambling on a claim of fair use by simply asking Professor W for permission to record the class.

China

A professor’s lecture is sheltered by copyright in two categories. If the lesson is written down, it is classified as a “written work.” If the lesson is only performed orally, it is categorized as an “oral work” (Copyright Law, 2010). Whether a student must first seek approval for audio recording or video recording the virtual classroom will depend on whether the lesson presented that day is either an unpublished or published lesson. If the lesson is an unpublished work, the copyright owner must grant approval before any recording can be made by another person (Naser, 2009; Zimmerman, 2010). If the lesson is a published work, a student or faculty member may make a recording, but will have to compensate the copyright owner. The most inexpensive route for Student Z is to receive written authorization from Professor W to record the journalism classroom, and—upon clarifying that the recording is for personal use—negotiate either no fee or a reduced one.

Educational Records

In many countries, a student’s educational records are considered personal information and are given special protection from public dissemination and use. Because the virtual classroom is conducted like a conventional classroom, students will receive test grades based on the material learned there. If placed on an academic transcript, these grades and achievements qualify as educational records. What happens when a university uses student grades derived from the virtual classroom as part of an advertising campaign? Can a university publish information about students and faculty that is harvested from activities inworld?

The United States

American educational institutions have a special responsibility to securely store student educational records. Universities may maintain educational records of a student, but may not release them to any third parties without the student’s written authorization (Family Educational Rights and Privacy Act
of 1974). Therefore, if a university desires to distribute a student’s educational record in any fashion, it must first receive written consent from the student. Post-secondary schools should exercise caution when selecting what information to use from a virtual classroom in advertisements to ensure that a student’s educational records are not compromised.

Moreover, federally funded universities that monitor, log, and store information about students or “human subjects” for the purpose of using the collected information for experimentation and research must first receive authorization for their virtual world and its method of collecting information by an institutional review board (IRB) (see Protection of Human Subjects of 1991). Earning IRB approval can take several months. A university may accelerate the process by collecting only information that is necessary to properly run the virtual classroom, reducing third party access to information about students, and only releasing information that students have expressly approved.

England

Institutes of higher education should curb the amount of information they collect from the virtual classroom. As determined by Section 7 of the Data Protection Act 1998, upon request by student or faculty, English universities must provide a privacy policy or notice that details what data on the individual is being held, why it is being stored, and provide a list of the outside parties that are receiving the data. The amount and type of information permitted for collection may vary by a number of factors, including who is collecting information and for what purpose. To that end, universities are encouraged to contact their local education authority or attorney to verify what information may be gathered regarding students and faculty (Carey, 2004).

There are also additional limitations on which outside parties may solicit educational records, also called curricular records. In England, universities must follow the procedures in the Education (Pupil Information) (England) Regulations (2000) when disclosing a student’s curricular records to parents, teachers, schools and government agencies. The type of information that can be passed on to these parties is subject to Section 5 of the regulations. It states that the headmaster of the school, or whoever is responsible for maintaining curricular records, may not disclose any information that is subject to the Data Protection Act 1998, which protects personally identifying information. Therefore, universities may only disclose general non-identifying information. It follows that the safest course for collecting information on students and faculty in the virtual world is to adhere to the Data Protection Act 1998, which
deals primarily with privacy and data storage, and thus I will not discuss it in this chapter.

**China**

Unlike the Family Education and Privacy Rights (1974) in the United States and the Data Protection Act 1998 affecting England, China does not have a law specifically protecting educational records from distribution. There are no regulations on human-subject experimentation that apply to collecting data from human subjects using a virtual world, except for Hong Kong, which has passed legislation on preserving privacy and data protection of human subjects (United States Department of Health and Human Services, 2011). As such, universities are able to accumulate a great deal of information related to educational records without worrying about violating an educational statute or privacy law.

**Future Directions and Conclusion**

Virtual classrooms will become commonplace in the future. Students are being introduced to online and virtual education even before they attend institutions of higher education. High schools in several regions of the United States are beginning to mandate enrolment in online classes for graduation (e.g., Idaho, Alabama, Florida, and Michigan). In addition, post-secondary universities such as the New York Law School, Harvard University, and the University of Texas have used virtual classrooms and virtual worlds in education (New York Law School, 2011; Virtual Learning Community Initiative, 2011; Wong, 2006).

For common law countries, a throng of virtual world issues have not yet been tested in courts, and in civil law countries there is an absence of legislation addressing them. In all three legal regimes, contract law remains the body of law that produces the most predictable results for resolving virtual world disputes. Therefore, universities should effectuate a comprehensive model of self-governance by installing internal policies and procedures that anticipate conflicts in the virtual world and are suited to remedy them. Educational institutions may put participants on notice about these domestic rules by sending some form of communication, such as an email or letter to a verified address, and by ensuring that the TOS, EULA, and other policies are simply phrased, easily accessible, and discoverable.

Further, teachers should either require students to sign and submit a contract affirming that teachers and university administration may use the student’s submissions, or prepare a detailed form template to send to students at the time that teacher wishes to use a student’s work. I urge the latter approach,
which promotes transparency of intentions and invites student engagement. Informed decisions are likely to prevent a multitude of disputes and promote group cohesion. By being aware of the legal and policy issues that surround virtual worlds in higher education, university administrators, faculty, and students in post-secondary schools may fully enjoy this dynamic learning environment without any unpleasant surprises.

Acknowledgements

I am most grateful to Professor Beth Novack for illuminating comments and guidance, Dong Fuyan for clarifying points of Chinese law, Alison Swety for assistance in copyediting, the three anonymous reviewers for their constructive feedback, and to numerous friends and family members who were ready with sincere words of support during this undertaking. All errors are my own.

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