

SEP 10 2008

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RICHARD MINSKY, an individual, d/b/a
SLART® ENTERPRISES,

Plaintiff

vs.

Linden Research, Inc., d/b/a Linden Lab®,
a Delaware corporation, John Doe (a/k/a
Victor Vezina), an individual, Philip
Rosedale, an individual, Mitchell Kapor,
an individual, other Does, presently
unknown to Plaintiff

Defendants

Civil Case No.: 08-CV-819

LEK/DRH

**ANSWER TO DEFENDANTS'
MOTION TO DISSOLVE
TEMPORARY RESTRAINING
ORDER AND DENY PRELIMINARY
INJUNCTION**

REPLY TO THE MEMORANDUM OF LAW

I. INTRODUCTION

The introduction flails a wide range of false accusations at me and at the United States Patent and Trademark Office (USPTO). They say I deceived the USPTO, and that the attorney at the USPTO did an incompetent examination my trademark application because she was overworked.

I don't know what they mean when they say I "don't even own" the term "SLART." I own the Federal Registered Trademark SLART®. They say I did not create the term "SLART." That is not the issue. The U.S. Olympic Committee did not create the term "Olympic," but they own the trademark for use of it international class 041.

They say that I "demand that Linden Lab interfere with the legitimate activities of others in the Second Life environment," but the only demand I have made is that they

interfere with illegal exploitation, infringement and dilution of my registered trademark in connection with classes of goods and services in which I am entitled to exclusive use.

They say there is no actual or threatened loss of any evidence. Later on in their document they claim they are preserving the evidence, though they have not provided evidence that they are preserving evidence. Even if the statement is true, the evidence they claim they are preserving is only evidence of third party infringement, not of their own infringement, which includes acts such as deleting content created by others without notifying them that the deleted content infringed on my trademark.

They claim they could not find the infringing use I provided an image of in my application for the TRO. I find that hard to believe. I just went into SL (Tuesday, Sept. 9, 2008), clicked on “search” went to the “classifieds” tab, typed in “slart” and there it was, in exactly the same place at the top of the list as it was last week. I specifically wrote to Marty Roberts about it, and Defendants admit they got that. Yet it’s still up. These are exactly the sort of shenanigans I was complaining about. I would call it contempt of court.

They claim my motivation is harassment and violation of privacy. I have not harassed anybody, nor do I want to invade anybody’s privacy. Let’s keep in mind right from the beginning of this discussion that we are not talking about a case of freedom of speech. I am an internationally recognized advocate and proponent of freedom of speech, and my artwork to encourage public awareness of The Bill of Rights and to preserve the rights guaranteed by the United States Constitution are well known. The unauthorized infringing uses that I complain of are not protected under nominative fair use as the service identified by the infringer could have easily been identified by using the term SL

art, my mark was used in its entirety, and the mark was used in connection with services offered that mirror services that I offer under my trademark SLART, thereby implying my sponsorship and endorsement.

The claims made on behalf of the defendants are based on groundless speculation and intentional deception of the court, which I will address one by one, and the required outcome is an order for the preliminary injunction, whether in its present form or modified.

Specifically, the Defendants' presentation is flawed by:

1. As the Honorable Judge Kahn states in his MEMORANDUM-DECISION and ORDER, page 4, irreparable harm is presumed in trademark infringement. Beyond the third party infringements that appear, Linden's removal of infringing material without notifying the infringing party of the true ownership of the infringed mark constitutes trademark infringement. Defendants provided no evidence of proper notice to the party Victor Vezina, and therefore their admission to having removed that material on July 29, 2008 constitutes admission of guilt in trademark infringement.

2. The Order was properly issued. Defendants claim, that the only argument for an *ex parte* order was that evidence was disappearing, is false. The issue stated is that "Upon being served with the original Complaint in the present matter, Linden caused the infringing matter to disappear and refused to provide any information about who had created, produced and presented the infringing matter, or by what means and with what notice the matter had been removed. That made it impossible to prosecute the offending party, if it was not Linden themselves." Prior to being served, Linden did not remove the infringing matter. In removing it they infringed the trademark by failing to identify its

true ownership. They then refused to either provide a copy of service of a notice of true ownership or to provide the identity of the infringer, if it was not Linden itself. The TRO and injunction are intended to prevent infringement of the SLART mark, including infringement by Linden as well as by third parties. Such acts of infringement by Linden would include their failure to disclose my ownership of the SLART trademark upon removing unauthorized uses of the SLART trademark from their service, as being an act in violation of federal and state unfair competition and false advertising laws.

.3. I understand Defendants' concerns and will work with the Court and Defendants to insure that non-infringing uses of the term are not erroneously acted upon. I reiterate my support for freedom of speech as noted above, and my intent to continue prosecuting infringement when SLART is used commercially in ways that may cause confusion as to the source of the goods or services, imply sponsorship or endorsement by me, is used to advertise products that can be identified by non-infringing terms such as SL art, or such other infringing uses as are prohibited by law.

4. I do not comprehend the Defendants' notion that I did not present an analysis of a likelihood of confusion. I have, among other enterprises, SLART Gallery [note that in the interest of readability I will not be putting the ® symbol on every instance of the trademark, which everyone reading this document knows is my mark]. If another gallery calls itself SLART Gallery, that is confusing to consumers and implies that I own it, have franchised it, or licensed it, or have some connection of approval with it. I have a critical review titled SLART magazine, and I curate and organize shows and art festivals in places other than my gallery. There is a SLART Summer Festival of the Arts that I organized in SL right now on the islands of Artropolis and Blue Fusion. If

someone else puts on a SLART Festival, people will likely think I organized and/or curated it. It's obviously confusing if someone else uses my mark for products or services similar to mine. Linden's act of providing this misinformation via their service, after being notified of its status as an unauthorized use, coupled with their refusal to remove instances of unauthorized use from the service based upon their beliefs regarding the validity of my federally registered trademark, constitute trademark infringement and false advertising.

In addition to the allegation outlined above, the defendants failure to disclose my ownership of the SLART trademark upon their removal of infringing material from their service constitutes dilution.

Defendants allege that I obtained the mark by misrepresentation to the PTO. On August 21, 2008 they filed a Petition for Cancellation with the Trademark Trial and Appeals Board [TTAB]. They made a material omission to the TTAB by filing the petition for cancellation and failing to inform the TTAB of ongoing proceedings before the Northern District Court of NY initiated by the registrant to clarify the rights and obligations of the parties regarding the SLART trademark. Besides this, the petition for cancellation is a groundless administrative challenge that shows the willingness of the defendant to use legal procedures as an aggressive competitive weapon in violation of state and federal unfair competition laws.

Defendants' last sentence in this section is a bizarre claim. First, the USPTO stated clearly that the mark SLART does not conflict with any similar registered or pending mark that would bar registration [Defendants' Exhibit K]. Even if Defendants owned "SL" as a mark it would not bar registration, as SLART is unique and distinct

from that. There are nearly 500 compound marks found in a quick search of the Trademark Electronic Search System [TESS] for “SL.” But that is not the key flaw in the Defendants’ final sentence. Even the error they make in their contention of ownership, that my mark “includes a mark owned by Second Life,” is not the issue. I assume that is a hasty error and they meant “owned by Linden Research, Inc.” The real problem for the Defendants is that Defendants have no rights in the term “SL” as a trademark. They base most of their arguments on their claim to that right, and the claim is false. “SL” is a generic descriptive term that has been in use for years by millions of people to describe the Second Life[®] virtual world and things associated with it. [I will follow the same convention hereinafter as with my own mark, and omit the ® in subsequent references to the Second Life virtual world, as it has been stated to be a mark owned by Linden Research, Inc.]. Linden condoned, used and promoted the use of the term SL descriptively within SL, on the secondlife.com website, and in the media. For years Linden encouraged businesses to use the term SL as part of their business name with no stated or implied license, and, on their website, promoted businesses that used SL in their business names. [Exhibit A]

II. PROCEDURAL ISSUES

Northern District of New York is the proper venue. At least one of the defendants, Linden Research, Inc., offers its service in this venue. This is where I signed up for the services and generally use the services, over the Internet. As for the individual defendants, I was in this district when I read their claims about the service and saw videos of them talking about the service on the Internet. If Defendants want to use that as a delaying tactic as they

tried to do in another District Court case, we can go through a similar procedure, but I believe it would be better in terms of coming to a speedier decision on the merits of the present case for opposing counsel to stipulate NDNY as the venue.

As far as the Terms of Service are concerned, in BRAGG v. LINDEN RESEARCH, INC. et al [2:2006cv04925 Filed: November 7, 2006, Pennsylvania Eastern District Court, Presiding Judge: Honorable Eduardo C. Robreno, Doc 51] The case was kept in PA because in opposition to Linden's Motion to Compel Arbitration (Doc 3) Bragg argued and Judge Robreno agreed that the TOS was a contract of adhesion...an unconscionable contract...and that its jurisdictional restrictions were unenforceable.

As for the personal jurisdiction issue, in the same Memorandum, Judge Robreno denied Philip Roseale's Motion to Dismiss for Lack of Personal Jurisdiction (Doc 2) because Philip Rosedale's representations in national media as part of a national campaign to induce persons, including the Plaintiff, to visit Second Life and become financially involved (in that case through purchase of virtual property) constitute sufficient contacts to exercise specific personal jurisdiction over Rosedale.

As for claims of trademark infringement that Defendants find "barely intelligible," I believe that the Court will find them to be more than intelligible and will make a declaratory judgment of infringement.

I submit the following rebuttal to their brief and demonstrate that the Order should be maintained and the preliminary injunction granted.

III. FACTUAL BACKGROUND

A. The statement that Linden has been using SL as a trademark since December of 2004 is hard to reconcile with the facts. Prior to their intent-to-use application to the USPTO of June 5, 2007, Defendants were not claiming SL as a trademark. I have scoured the web archive of secondlife.com since September, 2002 and have found no claim therein to SL as a trademark prior to March 24, 2008.

To the contrary, they published Terms of Service in which the term SL did not appear at all [Exhibit B], Community Standards in which the term SL did not appear at all [Exhibit C], a Trademark Usage Policy in which the term SL did not appear at all [Exhibit D], and had a trademark license that was not valid unless signed by an officer of Linden Research, Inc. [Exhibit E], at least through December 21, 2007, after the SLART trademark had been published for opposition, was unopposed by Linden or anyone else, and had received a Notice of Allowance.

At the same time as they were not using or claiming SL as a trademark, Linden was actively promoting the use of it by the community as a generic and descriptive term. A section on the secondlife.com website featured residents' blogs and websites, and the Second Life Trademark Usage Policy for Fansites did not contain the term SL [Exhibits F and G]. To the contrary, it required the following statement on websites, which did not include SL, and which I complied with:

“Required Trademark and Copyright Information. You must include the following information on your website: "Second Life® and Linden Lab® are trademarks or registered trademarks of Linden Research, Inc. All rights reserved. No infringement is intended."

Defendants' intent-to-use application before the USPTO of June 5, 2007 contains a sworn statement as to the use of the mark SL [Exhibit H]. This application was filed by

Linden's Trademark Administrator, whom one would expect to know more about Linden's trademarks than anyone else. The application claims no prior use of the SL trademark as of that date. In all the classes of goods and services for which Linden was applying for this mark, there was no date of first use or date of first use in commerce. In each class it was sworn to be intent to use the SL mark in the future.

As stated earlier, when Linden came out with their new Brand policy and Listed SL as a trademark I accepted their word for it, as did most of the residents of SL. It was not until I was told that because of that they would not recognize my SLART trademark that I investigated and learned the truth.

My position from the beginning was that SLART and "SL ART" are different, and the USPTO agreed with that, so I was shocked when the Defendants came down so hard on me after the fact. The USPTO had ruled that there were no conflicting marks so I didn't give it another thought. When I first learned that Linden was claiming SL as a mark, the week of March 24th, 2008, I didn't see much of a problem with that. I had already been using my mark for 16 months and it had already been awarded registration. I did not imagine that Linden would try to come after me for infringing a mark they were claiming after I registered mine. I had not, prior to researching the SL application in connection with the present conflict, been aware that they had applied last June for the mark, but even if I had known that, it would not have struck me that an intent-to-use application in June 2007 would be able to make claims on my previously used and applied for mark.

B. At the time I applied for registration of SLART as a trademark I searched the Internet and Second Life for commercial and other uses of the

term SLART. I found no references at that time to anyone other than me using it to describe art in SL. Other businesses were using SL in various ways for different sorts of products and services, with or without a space around the SL, but nobody was using SLART. Nobody was using it descriptively either, as far as I could see, and I figured that even if I missed someone who did use it, it was not in widespread use. All the references I found used SL Art, with a space. My belief was that artists and art dealers did not want their artworks associated with farts made while sleeping, or any of the other vernacular associations with the sound “slart.”

The Defendants found three things I had not seen before. One is a blog page with what appears to be an illustrated text titled “A shot in the dark at SLart.” I’m not clear whether that is the title of the work or a descriptive use similar to “SL art.” It also could be a typographic error. The second example they give is a comment by Torley Linden (everyone in the company uses the surname Linden), “don’t be SLartled.” That’s a clever variation on “startled” with something of a double entendre. Torley is one of the cleverest Linden employees. That also may be a descriptive use similar to “SL art.” The third example is the common form of SL Art that has always been and continues to be the dominant descriptive form for art in SL.

I did not claim to be the first ever to say “slart.” I understood that just because I had never seen or heard it didn’t mean that someone else didn’t say

it. I did claim to be the first to use it in commerce for the classes of goods and services for which I registered it, either because I had used it or intended to use it.

C. In this section the Defendants rely on the strategy of partial quotes organized with the intent to deceive the Court. I clearly stated to the USPTO that SLART describes art in Second Life, accurately stating: “There is no widespread usage of the term SLART to describe art in Second Life beyond my use of it.” SL and ART are both descriptive terms. Millions of people use SL to describe Second Life. I was relying on two trademark rules that the descriptive refusal would be overcome, and the USPTO agreed with me.

1213.05(c) Double Entendre

A double entendre is a word or expression capable of more than one interpretation. For trademark purposes, a double entendre is an expression that has a double connotation or significance as applied to the goods or services.

The mark that comprises the double entendre will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods or services.

1213.05(e) Sound Patterns

At times a mark will form a unitary whole through a rhyming pattern, use of alliteration or **some other use of sound that creates a distinctive impression.**

SLART is a double (or multiple) entendre and it creates a distinct impression that is different from “ess ell art.” The fact that on my website it appeared at some times with the SL one color and the ART another heightened the double entendre. I specifically used that version in my trademark application because if that was an issue I wanted to know about it right away. A word mark is independent of style or font, so I can use it in any variation. At some times the SLART logo has been animated on my website, and at others it is static. Sometimes the letters all cycle through different colors. At the time I wrote the application, and perhaps today as well, more of the general population will think SLART is a fart made while sleeping, or one of the other colloquial meanings, or just a funny sounding word, than will associate it with art in Second Life.

I am trying to get people to look at art in Second Life and it is not easy. I still find that most people never heard of SL, and among those who have heard of it, most had no idea that art could be made in SL. It is generally thought of as a social networking environment. In reality it is much more than that, and I am working to inform the general public of the cultural aspects. This benefits the Defendants. Many artists say that I have done more to bring their work to the awareness of the real world art world than anyone else.

As far as residents reacting “with surprise and anger,” the main resident who stirred up some controversy for a short time was a Belgian blogger who had organized a

gallery exhibition with the name SLART. As the trademark owner I was obligated to protest that, and the name was changed by the gallery owner as soon as I informed him of my trademark. The blogger was angry and started a smear campaign against me, but many prominent SL artists came to my defense and the attacks ceased. I would point out here that “slart” does not have the colloquial meanings to Belgians that it does to Americans, and that Belgians are generally not subject to U.S. trademarks.

The comment by the poster “Nebulosus Severine” on the first page of Defendants’ Exhibit M most accurately represents the attitude of the huge majority of serious artists in SL on this matter, particularly those who were already in SL when I entered and started using the SLART brand.

Also, I would like to point out to the court that the original post at the top of that page, titled “SLart Warfare,” posted by “Osprey,” states that “ ‘SL’ is commonly added to just about everything, (“SLamazons, SLeek, SLiterary, SLesbians, SLarchitecture, SLawyers)...” I appreciate the Defendants providing evidence that SL is a common term in general use that is added to just about everything. That is one more example of why they cannot claim it as a trademark.

D. Defendants have only been offering a license to use the “trademark” SL since March 24, 2008. Before that they did not, as shown earlier [Exhibits D,E]. This new policy, to issue a license for a generic term that cannot be trademarked, postdates my trademark registration.

Unlike the Defendants, it is my policy to recognize claims to intellectual property rights. When they announced their Brand Center policy on March 24 of this year, it appeared as though they were making a claim to what is generally regarded as a generic

descriptive term. I followed their instructions and put the notice they requested on my website. I subsequently learned the details of their use of SL, or lack thereof, and the use of the term by the general public, in relation to the importance of use as far as constructing legal arguments that could be used to object to their new assertion of rights. When I discovered that they do not in fact have a right to the generic descriptive term “SL” and that they could not claim it as a trademark .I then removed the SL trademark notice from my website.

As far as learning that Linden keeps snapshots of infringing matter, that’s good to know. Does Linden inform the resident who was infringing of the identity of the owner of the trademark they have infringed, and what that trademark is?

In this section, and also in a letter yesterday to the Honorable Judge Kahn, Defendants mention a mediation I was engaged in with Defendant Linden Research, Inc. The Defendants imply that the mediation was on the complaints set forth in Civil Court, but that is not true. The AAA mediation was very specific and addressed solely a Terms of Service issue in which I complain that Linden violated its own Terms of Service in its handling of the Vezina matter. That complaint was not included in the Civil action, and the Civil matters that relate to Federal and State law were not included in the mediation description. Linden and I agreed that the mediation would be confidential under Rule 408.

Since the mediation reached an impasse, it was terminated. I received the termination notice yesterday, Monday, September 8, from AAA. I am not sure where that will go from here. Perhaps the TOS matter could be merged with the present case, if Defendants will stipulate to the NYND venue. Otherwise it could go to arbitration.

IV. ARGUMENTS

Defendants claim that I did not make a showing of Irreparable Harm. On page 4 of the TRO the Honorable Judge Kahn cites Tough Traveler that irreparable harm is presumed in trademark cases and explains why.

As far as the ex parte issue is concerned, I did meet the requirements, but now Defendants are being heard so that is a moot point. Defendants go on to say that just because Vezina's use has not reappeared in a few weeks it is unlikely to appear again. They also say they didn't remove it the first time. So if they didn't remove it, was it really gone or just a fault in the SL system that made it appear to be gone? Or did Vezina remove it and then rebuild it, changing the name from SLart Garden to SLART? If so, what is stop him/her from doing so again, or opening a gallery elsewhere in SL, or in another virtual world, called SLART Gallery? If Vezina is a real person, and not a Linden fabrication, how does he/she know that SLART is a registered trademark belonging to me?

This keeps coming back to the real issue, that Linden thinks they made a big mistake not claiming SL as a trademark all these years, and encouraging everyone else to use it generically. The residents of SL consider it a generic term. The press uses SL as a generic term. Someone has to tell Linden that it's too late, and they should move on. After investing 20 months of my time building recognition for my brand among millions of people I feel it necessary to stand up for my rights.

A.1. Defendants say I didn't present evidentiary support of the likelihood of success. I thought I did, and the Honorable Judge Kahn agreed, at least to the extent that

there are serious questions going to the merits of my claim, and a balance of the hardships in my favor. Today's evidence further supports the likelihood of success To prove trademark infringement the holder of a mark must show: 1) that they possess a valid mark, 2) that defendants used the mark, 3) that defendants use of the mark occurred 'in commerce', 4) that defendants used the mark in connection with the sale ... or advertising of any goods and 5) that the defendants used the mark in a manner likely to confuse consumers.

I have a valid mark, the defendants published the mark vis a vis their hosting the same on their service, in commerce because they offer the service for sale, the use of the mark occurred in commerce again because they offer the service for sale to consumers across the US and worldwide, they used the mark in connection with advertising the goods and services of the unnamed defendants and the mark was used in a manner likely to confuse consumers as to the source of the services being offered because it was an advertisement for services similar to those offered in connection with the SLART mark. Further, defendants do not place any notice regarding their receipt of a complaint of unauthorized use at the location of the infringement therefore consumers have no way of knowing whether or not they are encountering even an allegedly infringing use nor whether I sponsor, condone or object to such use.

My trademark is damaged in terms of value and strength when my policing efforts are undermined by the defendant and unauthorized uses and misuses of the mark are not only made available after repeated notices but supported in violation of trademark law. If the mark is used incorrectly or used to identify another source of goods then the mark is

weakened and may become subject to attack or die a generic death. This makes the damage to goodwill real and foreseeable and the resulting harm irreparable.

A.2. Defendants reiterate their ludicrous notion that an art gallery named SLART is not confusing with SLART Gallery, and reiterate their fraudulent claim that I made misrepresentations to the USPTO. It is also a straightforward issue that if someone uses “slart” as a keyword for an art gallery classified ad and comes up in the classifieds search for “SLART” ahead of me, because they pay Linden more for the ad, a consumer is more likely to click through to their gallery than mine. I really don’t see what is so hard to understand about that.

A.3. As stated earlier, I will cooperate with the Court and Defendants to insure that the TRO is not abused, nor place the burden of searching for infringements on the Defendants. The Defendants quote some irrelevant first amendment cases. As stated earlier, this is a trademark infringement case and not a freedom of speech case. This isn’t a libel/slander issue, or about the free exchange of ideas. It’s about someone profiting from the goodwill that I have created through hard work in associating the SLART brand with the highest quality of curatorial acumen and production standards. When someone infringes on my trademark they are breaking the law. At the very least, they must be contacted and must sign a cease and desist agreement, stating that they understand that this is my trademark, will stop infringing and will not infringe on it again. And if they violate that, they must be prosecuted. I need to know who they are to do that.

Here we are talking about people who are selling goods and services similar to mine and using my brand to associate my fame and goodwill with their product or service. It’s not a big mystery what is going on.

I do not object to a protective order limiting the use of private information to the purpose of protecting my intellectual property rights.

I appreciate the interesting notion expressed by Defendants that any use of “slart” in an advertisement within Second Life is designed to attract users to computer generated virtual images, which one also might call art. Thus I may have been in error when I suggested that the ad for a pub/bar was not infringing. It may have been that, from spending so much time inside SL, I had begun to believe that a pub is a pub, which is not in international class 41, but if it is a work of art, it then falls within my class of goods and services. We are so much on the edge here, where law and technology meet, that it requires some thoughtful analysis just to be able to figure out what it is we are looking at.

I welcome the opportunity to resolve the details of this aspect of the TRO with the Court and opposing counsel.

I also welcome the opportunity to resolve with the Court and opposing counsel the specifics regarding condoning, encouraging and enabling. To me these concepts are quite clear and relate to specific actions that we can codify. For example, when notified by me that there is an infringing use, if it is not obvious to Defendants and there is any question about whether the use should be removed, they shall place a notice at the location of the filing of the abuse report indicating that an abuse report of trademark infringement was filed by ArtWorld Market, owner of the trademark SLART, and is being investigated.

And for the “fourth prong,” regarding Defendants’ claims to ownership or affiliation with the SLART mark, there are specific actions that this refers to, which are easily codified. It primarily requires Defendants to stop calling SLART “our mark,” and

in cases of infringement when I am unable to get a direct response from the infringing party, to inform them that actions Defendants may take in eliminating infringing uses are being done because the uses infringe the SLART mark, which is not owned by Linden, but is owned by me. There may be other actions that will come up in conference, but given that I have just one day to prepare this document and evidence unassisted, the foregoing represents the sort of thinking that will go into it. This is not intended to prevent Defendants from attempting to pursue claiming rights that I believe do not exist. Defendants are pursuing a cancellation action, and I am pursuing a dismissal of their Petition. The TTAB will review our arguments and come to a decision. From the schedule that has been presented, this could take two years or so before a decision is reached.

During that time I have a registered trademark and must protect it. I expect that in the end my trademark will be found to be a strong mark, particularly due to its memorable sound and ambiguous meaning. I also expect SL will be denied registration because it has become a generic descriptive word.

**V. THE TEMPORARY RESTRAINING ORDER SHOULD BE
CONTINUED AND A PRELIMINARY INJUNCTION SHOULD BE ORDERED**

For all the foregoing reasons, the TRO should be continued, with certain safeguards in place and specificity of action, to be determined by conference of the parties and subject to the approval of the Court. The Court also should issue a preliminary injunction without security, given the strength of my claims and pro se status. Additionally, the risk of substantial harm to Defendants is

minimal once the processes and actions are specified and the protective order is in place.

CONCLUSION

Defendants have failed to provide credible arguments or evidence to support their motion. To the contrary, they have provided evidence that supports my contention that the term “SL” that they have recently added to their list of claimed trademarks and are seeking to register is a generic term commonly used by residents of SL to describe all sorts of activities [Defendants’ Exhibit M].

That untenable claim is the hook they hang their defense on, and on which they have based their vendetta against me. They purport innocence and cooperation, but are doing whatever they can to undermine the SLART brand because they feel it threatens their claim to SL as a trademark, and their authority over any use with “SL” in it.

I have spent the last 20 months promoting the best artists in SL, exposing the outside world to them, getting stories about SL of a highly positive nature published internationally, and getting more artists, curators, collectors, writers, and cultural institutions to be involved in SL. Recently I have had to spend more time dealing with Linden’s legal department than on these positive contributions that advance my interests, the artists’ interests, and Linden’s interests.

Defendants have tried to make it seem like I’m the bad guy here, stealing the word “slart” from artists. That is the opposite of the truth. The exhibits in my motion for the TRO show an example of a gallery that is infringing the SLART brand and also using “sl art” in order to be listed with all the other galleries. They also show that “sl art” is the descriptive term used by all the other art galleries and artists. If anyone is co-opting a

term in general use it is the Defendants. I never encouraged anyone else to use SLART, but Defendants encouraged millions of people, some 15 million people by their count, to use SL as a generic term, a descriptive term, and as a business name. And then they turn around and say it is their trademark, and attempt to coerce businesses into changing their names. It's time for Justice.

EXHIBIT A

Example of Defendants promoting use of SL in business names

WHAT IS SECOND LIFE? | PROJECTS | BUSINESS PARTNERS | DEVELOPERS | COMMUNITY | SUPPORT

SHOWCASE

- Showcase Feature
- Media
- Machinima
- Screenshots
- Showcase Submissions

Showcase: Overview

Second Life is such a large place that it's often difficult to keep track of the thousands of fantastic builds, products and social events. The intent of this Showcase is to provide a window into the world and highlight new and exciting projects as they emerge. Each month, we'll highlight one Featured Build and provide interviews with the creators.

The showcase is also where you can see Second Life in action, with resident created Media and Machinima as well as Screenshots. We'll also continue to grow our library of great content, including the Game Showcase and Games Wiki.

If you'd like your Media, Project, Product, Game or Build to be featured here, please visit Showcase Submission.

- Resident Links -

JOIN NOW

Free Basic Membership

Fansites

Second Life residents show their colors with informative, creative and entertaining fan sites and blogs.

- Livingston Properties
- SL Exchange
- slvisions.com
- Second Life Wiki
- Second Life Image Gallery

[More...](#)


Land Stats

Trailing 7 day land sales:

Average Parcel Size:	0
Median Parcel Size:	0
Average L\$/Meter:	
Median L\$/Meter:	

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SHOWCASE

- Showcase Feature
- Media
- Machinima
- Screenshots
- Showcase Submissions

Showcase Feature

Project Title: SL Katrina Relief

Short Description: Using sims provided by LL, the group held fundraisers to collect \$L, which was later transferred to USD and donated to the American Red Cross for Hurricane Katrina Relief

Location: Big Easy/Biloxi sims



Team Leader SL Name: There wasn't a team leader, so to speak. We all had our projects that we worked on. Katt Kongo mainly did the float contest, Linden Lottery and SLebriety auction. Margaret Mfume built the riverboat, scheduled live music shows and arranged vendors. Frans Charming oversaw the construction projects.

Project Description: Our goal was to raise money for those who suffered as a result of Hurricane Katrina. We wanted to recreate areas of the affected area to call attention to what was lost in the storm. In the end, we had raised over \$L705,807 (\$3000)

Where Did You Get Your Idea? Many people in Second Life held fundraisers, and when LL saw the outpouring of support for hurricane victims, they chipped in by providing two sims on which to hold fundraisers. To use the sims, we had to join the group "SL Katrina Relief." All of the members of the group gathered for a meeting, and we outlined our various projects.

How Did You Assemble Your Team? It started out with people who were interested in fundraising, but when some dropped out, members of the group started asking their friends and acquaintances (and sometimes even total strangers) if they could help. We would ask someone on their friends' list if they could script or build, and they would often reply, "No, but so-and-so does." Many of our teammates joined the effort in that manner.

What Was the Greatest Challenge You Faced? The greatest challenge we faced was a certain feeling of apathy. Some people were ready to move on to other stories in the news, while others were simply short on resources of time and money.

What Was Your Greatest Triumph? Our greatest triumph, aside from the money we raised, would probably be in the feeling we gave people. I had never been to New Orleans, yet visiting the Big Easy sim made me feel like I had been. I know many people felt the same way.

What Are Your Plans for the Future? I will probably continue to engage in fundraisers outside of this group, and I'm sure the others will do the same.

Do You Have Any Helpful Advice for Someone Trying a Similar Project? Believe in what you are doing. Others may not share the same version, but no one can say whether or not you will be successful.

- Resident Links -

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EXHIBIT B

Second Life Terms of Service from January 3, 2007

[Resident Login](#) | [Join](#)**WHAT IS SECOND LIFE?****THE WORLD**

- Create an Avatar
- Explore
- Meet People
- Own Virtual Land
- Have Fun

THE CREATIONS

- Create Anything
- Building
- Scripting

THE MARKETPLACE

- Economy
 - Economy Graphs
 - Economic Statistics
 - LindeX Market Data
- Business Opportunities
- Businesses on the Web
- IP Rights

MEMBERSHIPS & PRICING

- Membership Plans
- Land Pricing & Use Fees

FAQ

Terms of Service

Welcome to Second Life! The following agreement (this "Agreement" or the "Terms of Service") describes the terms on which Linden Research, Inc. ("Linden Lab") offers you access to its services. This offer is conditioned on your agreement to all of the terms and conditions contained in the Terms of Service, including your compliance with the policies and terms linked to (by way of the provided URLs) from this Agreement. By using Second Life, you agree to these Terms of Service. If you do not so agree, you should decline this agreement, in which case you are prohibited from accessing or using Second Life. Linden Lab may amend this Agreement at any time in its sole discretion, effective upon posting the amended Agreement at the domain or subdomains of <http://secondlife.com> where the prior version of this Agreement was posted, or by communicating these changes through any written contact method we have established with you.

THE SERVICES AND CONTENT OF SECOND LIFE**1.1 Basic description of the service: Second Life, a multi-user environment, including software and websites.**

"Second Life" is the multi-user online service offered by Linden Lab, including the software provided to you by Linden Lab (collectively, the "Linden Software") and the online environments that support the service, including without limitation: the server computation, software access, messaging and protocols that simulate the Second Life environment (the "Servers"), the software that is provided by Linden Lab and installed on the local computer or other device you use to access the Servers and thereby view or otherwise access the Second Life environment (the "Viewer"), application program interfaces provided by Linden Lab to you for use with Second Life (the "APIs"), and access to the websites and services available from the domain and subdomains of <http://secondlife.com> (the "Websites"). The Servers, Viewer, APIs, Websites and any other Linden Software collectively constitute the "Service" as used in this Agreement.

1.2 Linden Lab is a service provider, which means, among other things, that Linden Lab does not control various aspects of the Service.

You acknowledge that Linden Lab is a service provider that may allow people to interact online regarding topics and content chosen by users of the service, and that users can alter the service environment on a real-time basis. Linden Lab generally does not regulate the content of communications between users or users' interactions with the Service. As a result, Linden Lab has very limited control, if any, over the quality, safety, morality, legality, truthfulness or accuracy of various aspects of the Service.

1.3 Content available in the Service may be provided by users of the Service, rather than by Linden Lab. Linden Lab and other parties have rights in their respective content, which you agree to respect.

You acknowledge that: (i) by using the Service you may have access to graphics, sound effects, music, video, audio, computer programs, animation, text and other creative output (collectively, "Content"), and (ii) Content may be provided under license by independent content providers, including contributions from other users of the Service (all such independent content providers, "Content Providers"). Linden Lab does not pre-screen Content.

You acknowledge that Linden Lab and other Content Providers have rights in their respective Content under copyright and other applicable laws and treaty provisions, and that except as described in this Agreement, such rights are not licensed or otherwise transferred by mere use of the Service. You accept full responsibility and liability for your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from Linden Lab.

1.4 Second Life "currency" is a limited license right available for purchase or free distribution at Linden Lab's discretion, and is not redeemable for monetary value from Linden Lab.

You acknowledge that the Service presently includes a component of in-world fictional currency ("Currency" or "Linden Dollars" or "L\$"), which constitutes a limited license right to use a feature of our product when, as, and if allowed by Linden Lab. Linden Lab may charge fees for the right to use Linden Dollars, or may distribute Linden Dollars without charge, in its sole discretion. Regardless of terminology used, Linden Dollars represent a limited license right governed solely under the terms of this Agreement,

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and are not redeemable for any sum of money or monetary value from Linden Lab at any time. You agree that Linden Lab has the absolute right to manage, regulate, control, modify and/or eliminate such Currency as it sees fit in its sole discretion, in any general or specific case, and that Linden Lab will have no liability to you based on its exercise of such right.

1.5 Second Life offers an exchange, called LindeX, for the trading of Linden Dollars, which uses the terms "buy" and "sell" to indicate the transfer of license rights to use Linden Dollars. Use and regulation of LindeX is at Linden Lab's sole discretion.

The Service currently includes a component called "Currency Exchange" or "LindeX," which refers to an aspect of the Service through which Linden Lab administers transactions among users for the purchase and sale of the licensed right to use Currency. Notwithstanding any other language or context to the contrary, as used in this Agreement and throughout the Service in the context of Currency transfer: (a) the term "sell" means "to transfer for consideration to another user the licensed right to use Currency in accordance with the Terms of Service," (b) the term "buy" means "to receive for consideration from another user the licensed right to use Currency in accordance with the Terms of Service," (c) the terms "buyer," "seller," "sale" and "purchase" and similar terms have corresponding meanings to the root terms "buy" and "sell," (d) "sell order" and similar terms mean a request from a user to Linden Lab to list Currency for sale on the Currency Exchange at a requested sale price, and (e) "buy order" and similar terms mean a request from a user for Linden Lab to match open sale listings with a requested purchase price and facilitate completion of the sale of Currency.

You agree and acknowledge that Linden Lab may deny any sell order or buy order individually or with respect to general volume or price limitations set by Linden Lab for any reason. Linden Lab may limit sellers or buyers to any group of users at any time. Linden Lab may halt, suspend, discontinue, or reverse any Currency Exchange transaction (whether proposed, pending or past) in cases of actual or suspected fraud, violations of other laws or regulations, or deliberate disruptions to or interference with the Service.

1.6 Second Life is subject to scheduled and unscheduled service interruptions. All aspects of the Service are subject to change or elimination at Linden Lab's sole discretion.

Linden Lab reserves the right to interrupt the Service with or without prior notice for any reason or no reason. You agree that Linden Lab will not be liable for any interruption of the Service, delay or failure to perform, and you understand that except as otherwise specifically provided in Linden Lab's billing policies posted at <http://secondlife.com/corporate/billing.php>, you shall not be entitled to any refunds of fees for interruption of service or failure to perform. Linden Lab has the right at any time for any reason or no reason to change and/or eliminate any aspect(s) of the Service as it sees fit in its sole discretion.

1.7 In the event you choose to use paid aspects of the Service, you agree to the posted pricing and billing policies on the Websites.

Certain aspects of the Service are provided for a fee or other charge. These fees and charges are described on the Websites, and in the event you elect to use paid aspects of the Service, you agree to the pricing, payment and billing policies applicable to such fees and charges, posted or linked at <http://secondlife.com/corporate/billing.php>. Linden Lab may add new services for additional fees and charges, or proactively amend fees and charges for existing services, at any time in its sole discretion.

ACCOUNT REGISTRATION AND REQUIREMENTS

2.1 You must establish an account to use Second Life, using true and accurate registration information.

You must establish an account with Linden Lab (your "Account") to use the Service, except for those portions of the Websites to which Linden Lab allows access without registration. You agree to provide true, accurate, current and complete information about yourself as prompted by the registration form ("Registration Data") and maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You may establish an Account with Registration Data provided to Linden Lab by a third party through the use of an API, in which case you may have a separate, additional account relationship with such third party. You authorize Linden Lab, directly or through third parties, to make any inquiries we consider necessary to validate your Registration Data. Linden Lab reserves all rights to vigorously pursue legal action against all persons who misrepresent personal information or are otherwise untruthful about their identity, and to suspend or cancel Accounts registered with inaccurate or incomplete information. Notwithstanding the foregoing, you acknowledge that Linden Lab cannot guarantee the accuracy of any information submitted by any user of the Service, nor any identity information about any user.

2.2 You must be 13 years of age or older to access Second Life; minors over the age of 13 are only permitted in a separate area, which adults are generally prohibited from using. Linden Lab cannot absolutely control whether minors or adults gain unauthorized access to the Service.

You must be at least 13 years of age to participate in the Service. Users

under the age of 18 are prohibited from accessing the Service other than in the area designated by Linden Lab for use by users from 13 through 17 years of age (the "Teen Area"). Users age 18 and older are prohibited from accessing the Teen Area. Any user age 18 and older who gains unauthorized access to the Teen Area is in breach of this Agreement and may face immediate termination of any or all Accounts held by such user for any area of the Service. If you reside in a jurisdiction where the age of majority is greater than 18 years old, you are prohibited from accessing the Service until you have reached such age of majority.

By accepting this agreement in connection with an Account outside the Teen Area, you represent that you are an adult 18 years of age or older. By accepting this agreement in connection with an Account for use in the Teen Area, you represent that (i) you are at least 13 years of age and less than 18 years of age; (ii) you have read and accept this Agreement; (iii) your parent or legal guardian has consented to you having an Account for use of the Teen Area and participating in the Service, and to providing your personal information for your Account; and (iv) your parent or legal guardian has read and accepted this Agreement.

Linden Lab cannot absolutely control whether minors gain access to the Service other than the Teen Area, and makes no representation that users outside the Teen Area are not minors. Linden Lab cannot absolutely control whether adults gain access to the Teen Area of the Service, and makes no representation that users inside the Teen Area are not adults. Adult employees, contractors and partners of Linden Lab regularly conduct their work in the Teen Area. Linden Lab cannot ensure that other users or any non-employee of Linden Lab will not provide Content or access to Content that parents or guardians may find inappropriate or that any user may find objectionable.

2.3 You need to use an account name in Second Life which is not misleading, offensive or infringing. You must select and keep secure your account password.

You must choose an account name to identify yourself to Linden Lab staff (your "Account Name"), which will also serve as the name for the graphical representation of your body in the Service (such representation, an "Avatar"). You may not select as your Account Name the name of another person to the extent that could cause deception or confusion; a name which violates any trademark right, copyright, or other proprietary right; a name which may mislead other users to believe you to be an employee of Linden Lab; or a name which Linden Lab deems in its discretion to be vulgar or otherwise offensive. Linden Lab reserves the right to delete or change any Account Name for any reason or no reason. You are fully responsible for all activities conducted through your Account or under your Account Name.

At the time your Account is opened, you must select a password. You are responsible for maintaining the confidentiality of your password and are responsible for any harm resulting from your disclosure, or authorizing the disclosure of, your password or from use by any person of your password to gain access to your Account or Account Name. At no time should you respond to an online request for a password other than in connection with the log-on process to the Service. Your disclosure of your password to any other person is entirely at your own risk.

2.4 Account registrations are limited per unique person. Transfers of accounts are generally not permitted.

Linden Lab may require you to submit an indication of unique identity in the account registration process; e.g. credit card or other payment information, or SMS message code or other information requested by Linden Lab. When an account is created, the information given for the account must match the address, phone number, and/or other unique identifier information associated with the identification method. You may register multiple accounts per identification method only at Linden Lab's sole discretion. A single account may be used by a single legal entity at Linden Lab's sole discretion and subject to Linden Lab's requirements. Additional accounts beyond the first account per unique user may be subject to fees upon account creation. You may not transfer your Account to any third party without the prior written consent of Linden Lab; notwithstanding the foregoing, Linden Lab will not unreasonably withhold consent to the transfer of an Account in good standing by operation of valid written will to a single natural person, provided that proper notice and documentation are delivered as requested by Linden Lab.

2.5 You may cancel your account at any time; however, there are no refunds for cancellation.

Accounts may be cancelled by you at any time. Upon your election to cancel, your account will be cancelled within 24 hours, but if you have paid for a period in advance you will be allowed to use the remaining time according to these Terms of Service unless your account or this Agreement is suspended or terminated based on our belief that you have violated this Agreement. There will be no refunds for any unused time on a subscription or any prepaid fees for any portion of the Service.

2.6 Linden Lab may suspend or terminate your account at any time, without refund or obligation to you.

Linden Lab has the right at any time for any reason or no reason to suspend or terminate your Account, terminate this Agreement, and/or refuse any and all current or future use of the Service without notice or

liability to you. In the event that Linden Lab suspends or terminates your Account or this Agreement, you understand and agree that you shall receive no refund or exchange for any unused time on a subscription, any license or subscription fees, any content or data associated with your Account, or for anything else.

2.7 Accounts affiliated with delinquent accounts are subject to remedial actions related to the delinquent account.

In the event an Account is suspended or terminated for your breach of this Agreement or your payment delinquency (in each case as determined in Linden Lab's sole discretion), Linden Lab may suspend or terminate the Account associated with such breach and any or all other Accounts held by you or your affiliates, and your breach shall be deemed to apply to all such Accounts.

2.8 You are responsible for your own Internet access.

Linden Lab does not provide Internet access, and you are responsible for all fees associated with your Internet connection.

LICENSE TERMS AND OTHER INTELLECTUAL PROPERTY TERMS

3.1 You have a nonexclusive, limited, revocable license to use Second Life while you are in compliance with the terms of service.

Subject to the terms of this Agreement, Linden Lab grants to you a non-exclusive, limited, fully revocable license to use the Linden Software and the rest of the Service during the time you are in full compliance with the Terms of Service. Additional terms may apply to use of the APIs or other separate elements of the Service (i.e. elements that are not required to use the Viewer or the Servers); these terms are available where such separate elements are available for download from the Websites. Nothing in this Agreement, or on Linden Lab's websites, shall be construed as granting you any other rights or privileges of any kind with respect to the Service or to any Content. You acknowledge that your participation in the Service, including your creation or uploading of Content in the Service, does not make you a Linden Lab employee and that you do not expect to be, and will not be, compensated by Linden Lab for such activities.

3.2 You retain copyright and other intellectual property rights with respect to Content you create in Second Life, to the extent that you have such rights under applicable law. However, you must make certain representations and warranties, and provide certain license rights, forbearances and indemnification, to Linden Lab and to other users of Second Life.

Users of the Service can create Content on Linden Lab's servers in various forms. Linden Lab acknowledges and agrees that, subject to the terms and conditions of this Agreement, you will retain any and all applicable copyright and other intellectual property rights with respect to any Content you create using the Service, to the extent you have such rights under applicable law.

Notwithstanding the foregoing, you understand and agree that by submitting your Content to any area of the service, you automatically grant (and you represent and warrant that you have the right to grant) to Linden Lab: (a) a royalty-free, worldwide, fully paid-up, perpetual, irrevocable, non-exclusive right and license to (i) use, reproduce and distribute your Content within the Service as permitted by you through your interactions on the Service, and (ii) use and reproduce (and to authorize third parties to use and reproduce) any of your Content in any or all media for marketing and/or promotional purposes in connection with the Service, provided that in the event that your Content appears publicly in material under the control of Linden Lab, and you provide written notice to Linden Lab of your desire to discontinue the distribution of such Content in such material (with sufficient specificity to allow Linden Lab, in its sole discretion, to identify the relevant Content and materials), Linden Lab will make commercially reasonable efforts to cease its distribution of such Content following the receipt of such notice, although Linden Lab cannot provide any assurances regarding materials produced or distributed prior to the receipt of such notice; (b) the perpetual and irrevocable right to delete any or all of your Content from Linden Lab's servers and from the Service, whether intentionally or unintentionally, and for any reason or no reason, without any liability of any kind to you or any other party; and (c) a royalty-free, fully paid-up, perpetual, irrevocable, non-exclusive right and license to copy, analyze and use any of your Content as Linden Lab may deem necessary or desirable for purposes of debugging, testing and/or providing support services in connection with the Service. Further, you agree to grant to Linden Lab a royalty-free, worldwide, fully paid-up, perpetual, irrevocable, non-exclusive, sublicensable right and license to exercise the copyright, publicity, and database rights you have in your account information, including any data or other information generated by your account activity, in any media now known or not currently known, in accordance with our privacy policy as set forth below, including the incorporation by reference of terms posted at <http://secondlife.com/corporate/privacy.php>.

You also understand and agree that by submitting your Content to any area of the Service, you automatically grant (or you warrant that the owner of such Content has expressly granted) to Linden Lab and to all other users of the Service a non-exclusive, worldwide, fully paid-up, transferable, irrevocable, royalty-free and perpetual License, under any and all patent rights you may have or obtain with respect to your Content,

to use your Content for all purposes within the Service. You further agree that you will not make any claims against Linden Lab or against other users of the Service based on any allegations that any activities by either of the foregoing within the Service infringe your (or anyone else's) patent rights.

You further understand and agree that: (i) you are solely responsible for understanding all copyright, patent, trademark, trade secret and other intellectual property or other laws that may apply to your Content hereunder; (ii) you are solely responsible for, and Linden Lab will have no liability in connection with, the legal consequences of any actions or failures to act on your part while using the Service, including without limitation any legal consequences relating to your intellectual property rights; and (iii) Linden Lab's acknowledgement hereunder of your intellectual property rights in your Content does not constitute a legal opinion or legal advice, but is intended solely as an expression of Linden Lab's intention not to require users of the Service to forego certain intellectual property rights with respect to Content they create using the Service, subject to the terms of this Agreement.

3.3 Linden Lab retains ownership of the account and related data, regardless of intellectual property rights you may have in content you create or otherwise own.

You agree that even though you may retain certain copyright or other intellectual property rights with respect to Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data Linden Lab stores on Linden Lab servers (including without limitation any data representing or embodying any or all of your Content). Your intellectual property rights do not confer any rights of access to the Service or any rights to data stored by or on behalf of Linden Lab.

3.4 Linden Lab licenses its textures and environmental content to you for your use in creating content in-world.

During any period in which your Account is active and in good standing, Linden Lab gives you permission to create still and/or moving media, for use only within the virtual world environment of the Service ("in-world"), which use or include the "textures" and/or "environmental content" that are both (a) created or owned by Linden Lab and (b) displayed by Linden Lab in-world.

CONDUCT BY USERS OF SECOND LIFE

4.1 You agree to abide by certain rules of conduct, including the Community Standards and other rules prohibiting illegal and other practices that Linden Lab deems harmful.

You agree to read and comply with the Community Standards posted on the Websites, (for users 18 years of age and older, at <http://secondlife.com/corporate/cs.php>; and for users of the Teen Area, at <http://teen.secondlife.com/footer/cs>

In addition to abiding at all times by the Community Standards, you agree that you shall not: (i) take any action or upload, post, e-mail or otherwise transmit Content that infringes or violates any third party rights; (ii) impersonate any person or entity without their consent, including, but not limited to, a Linden Lab employee, or falsely state or otherwise misrepresent your affiliation with a person or entity; (iii) take any action or upload, post, e-mail or otherwise transmit Content that violates any law or regulation; (iv) take any action or upload, post, e-mail or otherwise transmit Content as determined by Linden Lab at its sole discretion that is harmful, threatening, abusive, harassing, causes tort, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (v) take any actions or upload, post, e-mail or otherwise transmit Content that contains any viruses, Trojan horses, worms, spyware, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (vi) take any action or upload, post, email or otherwise transmit any Content that would violate any right or duty under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (vii) upload, post, email or otherwise transmit any unsolicited or unauthorized advertising, or promotional materials, that are in the nature of "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation that Linden Lab considers in its sole discretion to be of such nature; (viii) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service; (ix) attempt to gain access to any other user's Account or password; or (x) "stalk", abuse or attempt to abuse, or otherwise harass another user. Any violation by you of the terms of the foregoing sentence may result in immediate and permanent suspension or cancellation of your Account. You agree that Linden Lab may take whatever steps it deems necessary to abridge, or prevent behavior of any sort on the Service in its sole discretion, without notice to you.

4.2 You agree to use Second Life as provided, without unauthorized software or other means of access or use. You will not make unauthorized works from or conduct unauthorized distribution of the Linden Software.

Linden Lab has designed the Service to be experienced only as offered by Linden Lab at the Websites or partner websites. Linden Lab is not responsible for any aspect of the Service that is accessed or experienced using software or other means that are not provided by Linden Lab. You agree not to create or provide any server emulators or other software or other means that provide access to or use of the Servers without the express written authorization of Linden Lab. Notwithstanding the foregoing, you may use and create software that provides access to the Servers for the same function (or subset thereof) as the Viewer; provided that such software is not used for and does not enable any violation of these Terms of Service. Linden Lab is not obligated to allow access to the Servers by any software that is not provided by Linden Lab, and you agree to cease using, creating, distributing or providing any such software at the request of Linden Lab. You acknowledge that you do not have the right to create, publish, distribute, create derivative works from or use any software programs, utilities, applications, emulators or tools derived from or created for the Service, except that you may use the Linden Software to the extent expressly permitted by this Agreement. You are prohibited from taking any action that imposes an unreasonable or disproportionately large load on Linden Lab's infrastructure.

You may not charge any third party for using the Linden Software to access and/or use the Service, and you may not modify, adapt, reverse engineer (except as otherwise permitted by applicable law), decompile or attempt to discover the source code of the Linden Software, or create any derivative works of the Linden Software or the Service, or otherwise use the Linden Software except as expressly provided in this Agreement. You may not copy or distribute any of the written materials associated with the Service. Notwithstanding the foregoing, you may copy the Viewer that Linden Lab provides to you, for backup purposes and may give copies of the Viewer to others free of charge.

4.3 You will comply with the processes of the Digital Millennium Copyright Act regarding copyright infringement claims covered under such Act.

Our policy is to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act ("DMCA"). Copyright-infringing materials found within the world of Second Life can be identified and removed via Linden Lab's DMCA compliance process listed at <http://secondlife.com/corporate/dmca.php>, and you agree to comply with such process in the event you are involved in any claim of copyright infringement to which the DMCA may be applicable.

4.4 You will not use the marks of Linden Lab without authorization from Linden Lab.

You are not permitted to use the marks "Second Life", "Linden Lab", the eye-in-hand logo, or any other trade, service or other marks registered to or owned by Linden Lab, except as explicitly authorized by Linden Lab and in accordance with guidelines posted at http://secondlife.com/community/fansites_regs.php.

RELEASES, DISCLAIMERS OF WARRANTY, LIMITATION OF LIABILITY, AND INDEMNIFICATION

5.1 You release Linden Lab from your claims relating to other users of Second Life. Linden Lab has the right but not the obligation to resolve disputes between users of Second Life.

As a condition of access to the Service, you release Linden Lab (and Linden Lab's shareholders, partners, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, distributors) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with any dispute you have or claim to have with one or more users of the Service. You further understand and agree that: (a) Linden Lab will have the right but not the obligation to resolve disputes between users relating to the Service, and Linden Lab's resolution of any particular dispute does not create an obligation to resolve any other dispute; (b) to the extent Linden Lab elects to resolve such disputes, it will do so in good faith based solely on the general rules and standards of the Service and will not make judgments regarding legal issues or claims; (c) Linden Lab's resolution of such disputes will be final with respect to the virtual world of the Service but will have no bearing on any real-world legal disputes in which users of the Service may become involved; and (d) you hereby release Linden Lab (and Linden Lab's shareholders, partners, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, distributors) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with Linden Lab's resolution of disputes relating to the Service.

5.2 Other service or product providers may form contractual relationships with you. Linden Lab is not a party to your relationship with such other providers.

Subject to the terms of this Agreement, you may view or use the environment simulated by the Servers through viewer software that is not the Viewer provided by Linden Lab, and you may register for use of Second Life through websites that are not Websites owned and operated by Second Life. Linden Lab is not responsible for any software used with or in connection with Second Life other than Linden Software developed by

Linden Lab. Linden Lab does not control and is not responsible for any information you provide to parties other than Linden Lab. Linden Lab is not a party to your agreement with any party that provides software, products or services to you in connection with Second Life.

5.3 All data on Linden Lab's servers are subject to deletion, alteration or transfer.

When using the Service, you may accumulate Content, Currency, objects, items, scripts, equipment, or other value or status indicators that reside as data on Linden Lab's servers. THESE DATA, AND ANY OTHER DATA, ACCOUNT HISTORY AND ACCOUNT NAMES RESIDING ON LINDEN LAB'S SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN LINDEN LAB'S SOLE DISCRETION.

YOU ACKNOWLEDGE THAT, NOTWITHSTANDING ANY COPYRIGHT OR OTHER RIGHTS YOU MAY HAVE WITH RESPECT TO ITEMS YOU CREATE USING THE SERVICE, AND NOTWITHSTANDING ANY VALUE ATTRIBUTED TO SUCH CONTENT OR OTHER DATA BY YOU OR ANY THIRD PARTY, LINDEN LAB DOES NOT PROVIDE OR GUARANTEE, AND EXPRESSLY DISCLAIMS (SUBJECT TO ANY UNDERLYING INTELLECTUAL PROPERTY RIGHTS IN THE CONTENT), ANY VALUE, CASH OR OTHERWISE, ATTRIBUTED TO ANY DATA RESIDING ON LINDEN LAB'S SERVERS.

YOU UNDERSTAND AND AGREE THAT LINDEN LAB HAS THE RIGHT, BUT NOT THE OBLIGATION, TO REMOVE ANY CONTENT (INCLUDING YOUR CONTENT) IN WHOLE OR IN PART AT ANY TIME FOR ANY REASON OR NO REASON, WITH OR WITHOUT NOTICE AND WITH NO LIABILITY OF ANY KIND.

5.4 Linden Lab provides the Service on an "as is" basis, without express or implied warranties.

LINDEN LAB PROVIDES THE SERVICE, THE LINDEN SOFTWARE, YOUR ACCOUNT AND ALL OTHER SERVICES STRICTLY ON AN "AS IS" BASIS, PROVIDED AT YOUR OWN RISK, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Without limiting the foregoing, Linden Lab does not ensure continuous, error-free, secure or virus-free operation of the Service, the Linden Software or your Account, and you understand that you shall not be entitled to refunds for fees based on Linden Lab's failure to provide any of the foregoing other than as explicitly provided in this Agreement. Some jurisdictions do not allow the disclaimer of implied warranties, and to that extent, the foregoing disclaimer may not apply to you.

5.5 Linden Lab's liability to you is expressly limited, to the extent allowable under applicable law.

IN NO EVENT SHALL LINDEN LAB OR ANY OF ITS SHAREHOLDERS, PARTNERS, AFFILIATES, DIRECTORS, OFFICERS, SUBSIDIARIES, EMPLOYEES, AGENTS, SUPPLIERS, LICENSEES OR DISTRIBUTORS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOST PROFITS, ARISING (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) OUT OF OR IN CONNECTION WITH THE SERVICE (INCLUDING ITS MODIFICATION OR TERMINATION), THE LINDEN SOFTWARE, YOUR ACCOUNT (INCLUDING ITS TERMINATION OR SUSPENSION) OR THIS AGREEMENT, WHETHER OR NOT LINDEN LAB MAY HAVE BEEN ADVISED THAT ANY SUCH DAMAGES MIGHT OR COULD OCCUR AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN ADDITION, IN NO EVENT WILL LINDEN LAB'S CUMULATIVE LIABILITY TO YOU FOR DIRECT DAMAGES OF ANY KIND OR NATURE EXCEED FIFTY DOLLARS (U.S. \$50.00). Some jurisdictions do not allow the foregoing limitations of liability, so to the extent that any such limitation is impermissible, such limitation may not apply to you. You agree that Linden Lab cannot be held responsible or liable for anything that occurs or results from accessing or subscribing to the Service.

5.6 You will indemnify Linden lab from claims arising from breach of this Agreement by you, from your use of Second Life, from loss of Content due to your actions, or from alleged infringement by you.

At Linden Lab's request, you agree to defend, indemnify and hold harmless Linden Lab, its shareholders, partners, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, distributors, Content Providers, and other users of the Service, from all damages, liabilities, claims and expenses, including without limitation attorneys' fees and costs, arising from any breach of this Agreement by you, or from your use of the Service. You agree to defend, indemnify and hold harmless Linden Lab, its shareholders, partners, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, and distributors, from all damages, liabilities, claims and expenses, including without limitation attorneys' fees and costs, arising from: (a) any action or inaction by you in connection with the deletion, alteration, transfer or other loss of Content, status or other data held in connection with your Account, and (b) any claims by third parties that your activity or Content in the Service infringes upon, violates or misappropriates any of their intellectual property or proprietary rights.

PRIVACY POLICY**6.1 Linden Lab uses your personal information to operate and improve Second Life, and will not give your personal information to third parties except to operate, improve and protect the Service.**

The personal information you provide to us during registration is used for Linden Lab's internal purposes only. Linden Lab uses the information it collects to learn what you like and to improve the Service. Linden Lab will not give any of your personal information to any third party without your express approval except: as reasonably necessary to fulfill your service request, to third-party fulfillment houses, customer support, billing and credit verification services, and the like; to comply with tax and other applicable law; as otherwise expressly permitted by this Agreement or as otherwise authorized by you; to law enforcement or other appropriate third parties in connection with criminal investigations and other investigations of fraud; or as otherwise necessary to protect Linden Lab, its agents and other users of the Service. Linden Lab does not guarantee the security of any of your private transmissions against unauthorized or unlawful interception or access by third parties. Linden Lab can (and you authorize Linden Lab to) disclose any information about you to private entities, law enforcement agencies or government officials, as Linden Lab, in its sole discretion, believes necessary or appropriate to investigate or resolve possible problems or inquiries, or as otherwise required by law. If you request any technical support, you consent to Linden Lab's remote accessing and review of the computer onto which you load Linden Software for purposes of support and debugging. You agree that Linden Lab may communicate with you via email and any similar technology for any purpose relating to the Service, the Linden Software and any services or software which may in the future be provided by Linden Lab or on Linden Lab's behalf. You agree to read the disclosures and be bound by the terms of the additional Privacy Policy information posted on our website at <http://secondlife.com/corporate/privacy.php>.

6.2 Linden Lab may observe and record your interaction within the Service, and may share aggregated and other general information (not including your personal information) with third parties.

You acknowledge and agree that Linden Lab, in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service. Linden Lab may share general, demographic, or aggregated information with third parties about our user base and Service usage, but that information will not include or be linked to any personal information without your consent.

GENERAL PROVISIONS

The rights and obligations of the parties under this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods; rather such rights and obligations shall be governed by and construed under the laws of the State of California, including its Uniform Commercial Code, without reference to conflict of laws principles. The Service is controlled and operated by Linden Lab from its offices within the State of California, United States of America. Linden Lab makes no representation that any aspect of the Service is appropriate or available for use in jurisdictions outside of the United States. Those who choose to access the Service from other locations are responsible for compliance with applicable local laws. The Linden Software is subject to all applicable export restrictions. You must comply with all export and import laws and restrictions and regulations of any United States or foreign agency or authority relating to the Linden Software and its use.

Any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by binding arbitration in San Francisco, California under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief or enforcement of this arbitration provision without breach of this arbitration provision.

Linden Lab's failure to act with respect to a breach by you or others does not waive Linden Lab's right to act with respect to that breach or subsequent or similar breaches. No consent or waiver by Linden Lab under this Agreement shall be deemed effective unless delivered in a writing signed by a duly appointed officer of Linden Lab. All or any of Linden Lab's rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Service in a merger, acquisition or sale of all or substantially all of Linden Lab's assets. You may not assign or transfer this Agreement or any or all of your rights hereunder without the prior written consent of Linden Lab, and any attempt to do so is void. Notwithstanding anything else in this Agreement, no default, delay or failure to perform on the part of Linden Lab shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of Linden Lab.

This Agreement sets forth the entire understanding and agreement between you and Linden Lab with respect to the subject matter hereof. The section headings used herein, including descriptive summary sentences at the start of each section, are for convenience only and shall not affect the interpretation of this Agreement. If any provision of this Agreement shall be held by a court of competent jurisdiction to be

unlawful, void, or for any reason unenforceable, then in such jurisdiction that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of the remaining provisions.

Linden Lab may give notice to you by means of a general notice on our website at <http://secondlife.com>, electronic mail to your e-mail address on our records for your Account, or by written communication sent by first class mail, postage prepaid, or overnight courier to your address on record for your Account. All notices given by you or required under this Agreement shall be faxed to: (415) 243-9045 Attn.: Customer Service/TOS; mailed to us at Linden Lab, 1100 Sansome Street, San Francisco, CA 94111, Attn: Customer Service/TOS; or emailed with the subject line "TOS Notice" to support@lindenlab.com.

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EXHIBIT C

SL Community Standards from January 4, 2007

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WHAT IS SECOND LIFE?

THE WORLD

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- Explore
- Meet People
- Own Virtual Land
- Have Fun

THE CREATIONS

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- Building
- Scripting

THE MARKETPLACE

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 - Economy Graphs
 - Economic Statistics
 - LindeX Market Data

- Business Opportunities
- Businesses on the Web
- IP Rights

MEMBERSHIPS & PRICING

- Membership Plans
- Land Pricing & Use Fees

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Community Standards

Welcome to Second Life.

We hope you'll have a richly rewarding experience, filled with creativity, self expression and fun.

The goals of the Community Standards are simple: treat each other with respect and without harassment, adhere to local standards as indicated by simulator ratings, and refrain from any hate activity which slurs a real-world individual or real-world community. Behavioral Guidelines - The "Big Six"

Within Second Life, we want to support Residents in shaping their specific experiences and making their own choices.

The Community Standards sets out six behaviors, the "**Big Six**", that will result in suspension or, with repeated violations, expulsion from the Second Life Community.

All Second Life Community Standards apply to all areas of Second Life, the Second Life Forums, and the Second Life Website.

1. **Intolerance**
Combating intolerance is a cornerstone of Second Life's Community Standards. Actions that marginalize, belittle, or defame individuals or groups inhibit the satisfying exchange of ideas and diminish the Second Life community as whole. The use of derogatory or demeaning language or images in reference to another Resident's race, ethnicity, gender, religion, or sexual orientation is never allowed in Second Life.
2. **Harassment**
Given the myriad capabilities of Second Life, harassment can take many forms. Communicating or behaving in a manner which is offensively coarse, intimidating or threatening, constitutes unwelcome sexual advances or requests for sexual favors, or is otherwise likely to cause annoyance or alarm is Harassment.
3. **Assault**
Most areas in Second Life are identified as Safe. Assault in Second Life means: shooting, pushing, or shoving another Resident in a Safe Area (see Global Standards below); creating or using scripted objects which singularly or persistently target another Resident in a manner which prevents their enjoyment of Second Life.
4. **Disclosure**
Residents are entitled to a reasonable level of privacy with regard to their Second Lives. Sharing personal information about a fellow Resident --including gender, religion, age, marital status, race, sexual preference, and real-world location beyond what is provided by the Resident in the First Life page of their Resident profile is a violation of that Resident's privacy. Remotely monitoring conversations, posting conversation logs, or sharing conversation logs without consent are all prohibited in Second Life and on the Second Life Forums.
5. **Indecency**
Second Life is an adult community, but Mature material is not necessarily appropriate in all areas (see Global Standards below). Content, communication, or behavior which involves intense language or expletives, nudity or sexual content, the depiction of sex or violence, or anything else broadly offensive must be contained within private land in areas rated Mature (M). Names of Residents, objects, places and groups are broadly viewable in Second Life directories and on the Second Life website, and must adhere to PG guidelines.
6. **Disturbing the Peace**
Every Resident has a right to live their Second Life. Disrupting scheduled events, repeated transmission of undesired advertising content, the use of repetitive sounds, following or self-spawning items, or other objects that intentionally slow server performance or inhibit another Resident's ability to enjoy Second Life are examples of Disturbing the Peace.

Policies and Policing

Global Standards, Local Ratings

All areas of Second Life, including the www.secondlife.com website and the Second Life Forums, adhere to the same Community Standards. Locations within Second Life are noted as Safe or Unsafe and rated Mature (M) or non-Mature (PG), and behavior must conform to the local ratings. Any unrated area of Second Life or the Second Life website should be considered non-Mature (PG).

Search Second Life

JOIN NOW

Free Basic Membership

Resident Referral

Tell your friends about Second Life.

[Learn More](#)

Gift Certificate

Purchase a gift certificate now!

[Learn More](#)

Islands

Buy your own island today!

[Learn More](#)

Got Questions?

Call us! 1 (800) 961-6851
Monday thru Friday, 9am-6pm PST.

[Learn More](#)

Warning, Suspension, Banishment

Second Life is a complex society, and it can take some time for new Residents to gain a full understanding of local customs and mores. Generally, violations of the Community Standards will first result in a Warning, followed by Suspension and eventual Banishment from Second Life. In-World Representatives, called Liaisons, may occasionally address disciplinary problems with a temporary removal from Second Life.

Global Attacks

Objects, scripts, or actions which broadly interfere with or disrupt the Second Life community, the Second Life servers or other systems related to Second Life will not be tolerated in any form. We will hold you responsible for any actions you take, or that are taken by objects or scripts that belong to you. Sandboxes are available for testing objects and scripts that have components that may be unmanageable or whose behavior you may not be able to predict. If you chose to use a script that substantially disrupts the operation of Second Life, disciplinary actions will result in a minimum two-week suspension, the possible loss of in-world inventory, and a review of your account for probable expulsion from Second Life.

Alternate Accounts

While Residents may choose to play Second Life with more than one account, specifically or consistently using an alternate account to harass other Residents or violate the Community Standards is not acceptable. Alternate accounts are generally treated as separate from a Resident's principal account, but misuse of alternate accounts can and will result in disciplinary action on the principal account.

Buyer Beware

Linden Lab does not exercise editorial control over the content of Second Life, and will make no specific efforts to review the textures, objects, sounds or other content created within Second Life. Additionally, Linden Lab does not certify or endorse the operation of in-world games, vending machines, or retail locations; refunds must be requested from the owners of these objects.

Reporting Abuse

Residents should report violations of the Community Standards using the Abuse Reporter tool located under the Help menu in the in-world tool bar. Every Abuse Report is individually investigated, and the identity of the reporter is kept strictly confidential. If you need immediate assistance, in-world Liaisons may be available to help. Look for Residents with the last name Linden.

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EXHIBIT D

SL Trademark Usage Policy from April 27, 2007 (image from web archive) and text of the same policy copied from the December 21, 2007 secondlife.com website.

Linden Research and Second Life General Trademark Usage Policy

This document outlines the policy of Linden Research, Inc. ("Linden," for short) regarding the use of its trademarks. Any use of any Linden trademark must be in accordance with this policy. As used in this memo, "trademarks" means not just Linden's logos, but also the names of its various products, including Second Life and LindeX as well as the names Linden, Linden Research, and Linden Lab.

Our trademark policy balances the competing interests of our need to ensure that our trademarks remain reliable indicators of quality against our desire to permit Second Life community members and others that we work with to discuss our products and to accurately describe their affiliation and that of their own products and/or services with Linden and its Second Life virtual world. This balance can be difficult to strike, but we believe this policy successfully does so.

In order to understand this policy, one must have a basic understanding of the general law of trademarks. A trademark is any word, symbol, or other device that helps consumers identify the source of products and/or services. The products and services provided by companies obviously differ in their respective nature and quality. The trademarks used by such companies come to identify them and enable consumers to immediately identify the nature and quality of the product identified by the mark. If such companies permitted others to place these same trademarks on goods of a different nature or quality, the marks would no longer serve their intended purpose.

While the trademark usage rules included in this policy and its companion documents and FAQs are sometimes very specific, they all are based on Linden's desire to ensure that its marks are used only in ways that do not **i)** create any consumer confusion and **ii)** disparage Linden products and services. Products and services that are not produced by Linden shouldn't imply, either directly or by omission, that they are. By requiring that use not be disparaging, we mean that, outside the bounds of fair criticism, you can't use our trademarks as vehicles for defaming us or sully our reputation. These basic requirements can serve as a guide as you work your way through the policy.

Linden's trademark policy begins by outlining some overall guidelines for the use of Linden's trademarks -- including the names Linden, Linden Lab, Linden Research, Second Life, LindeX, the Linden Lab Hexagon Logo, and the Second Life Hand Logo -- in printed materials. It then addresses a series of more specific topics, including the use of Linden's trademarks on distributions of Linden's products, linking to Linden's websites and the use of Linden trademarks in domain names. Licensed use of the Linden Trademarks will generally be under the Linden Trademark License.

[Resident Login](#) | [Join](#)

WHAT IS SECOND LIFE?

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The Creations

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- Scripting

The Marketplace

- Economy
- Economy Graphs
- Economic Statistics
- LindeX Market Data
- Business Opportunities
- IP Rights

Memberships & Pricing

- Membership Plans
- Land Pricing & Use Fees

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Trademark Usage

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Trademark Usage Home

- [Linden Lab Trademark and Usage Policy](#)
- [Linden Research Trademark License \(SAMPLE\)](#)
- [Distributing Second Life Software](#)
- [General Guidelines for Printed Materials and Web Sites](#)

In order to understand this policy, one must have a basic understanding of the general law of trademarks. A trademark is any word, symbol, or other device that helps consumers identify the source of products and/or services. The products and services provided by companies obviously differ in their respective nature and quality. The trademarks used by such companies come to identify them and enable consumers to immediately identify the nature and quality of the product identified by the mark. If such companies permitted others to place these same trademarks on goods of a different nature or quality, the marks would no longer serve their intended purpose.

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 - [FAQ](#)

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EXHIBIT E

Linden Research Trademark License (SAMPLE) from October 6, 2007 (was on the SL website at least through December 21, 2007, image from web archive) and more readable version of the same license, text copied from the SL website of July 18, 2007

Linden Research Trademark License (SAMPLE)

The following is sample text for a trademark license with Linden Lab. THIS TRADEMARK LICENSE IS NOT VALID UNLESS SIGNED BY AN OFFICER OF LINDEN RESEARCH, INC.

Linden Research hereby grants you a nonexclusive, nontransferable, nonsublicenseable, revocable, limited license to use the SECOND LIFE trademark to identify only your goods and/or services that are either available in or related to the Second Life virtual world.

You may only use the trademarks, logos, service marks, trade dress, slogans, copyrighted designs or other brand features (collectively "Linden Research Marks") related to Second Life as explicitly licensed by Linden Research, and only under the terms and conditions and for the purposes described in such License.

All uses of any Linden Research Marks other than the SECOND LIFE word mark must be approved in advance by Linden Research. You may request approval by completing and submitting the Request for Approval Form as detailed in the form. You must also include complete samples of each proposed use. Linden Research will typically review the request and respond within ten (10) business days, but is under no obligation to respond. You may not use the mark(s) as requested unless and until Linden Research has granted its specific approval and you have fulfilled any and all conditions of such approval.

You must ensure that the presentation of the Linden Research Marks will be consistent with Linden Research's own use of the marks in comparable media. From time to time during the term of the License, Linden Research may provide you with written guidelines as to the size, typeface, colors, and other graphic characteristics of the marks, which upon delivery to you shall be deemed to be incorporated into the License and into these Guidelines.

All trademarks and service marks will be designated with "SM", "" or ""', in the manner directed by Linden Research.

All products and/or services for which you use the mark licensed hereunder shall be of a nature and quality acceptable to Linden Research in its sole discretion. You shall not use or present any Linden Research Marks: a) in a manner that suggests that editorial content has been authored by, or represents the views or opinions of, Linden Research or any Linden Research personnel or affiliate; b) in a manner that Linden Research determines to be misleading, defamatory, libelous, obscene, infringing or otherwise objectionable; c) in connection with any material that infringes the trademark, copyright or any other rights of any third party; or d) in a manner that infringes, derogates, dilutes, or impairs the rights of Linden Research in the its marks. Linden Research shall have complete discretion to evaluate your use and to decide whether that use violates any of the foregoing restrictions. In the event that Linden notifies you that your goods and/or services are not acceptable, you agree to immediately cease any and all use of the marks.

Any use of the Linden Research Marks shall inure to its benefit. You acknowledge that Linden Research is the owner of all of the Linden Research Marks and warrant that you will not take any action which is inconsistent with Linden Research's ownership thereof.

You agree to make any changes to your use of the Linden Research Marks as are requested by Linden Research. This remedy is in addition to any other legal remedies to which Linden Research may be entitled in relation to the its marks.

Linden Research makes no representations and/or warranties concerning the Linden Research Marks and explicitly disclaims any and all implied warranties including any warranties of noninfringement, merchantability, and/or fitness for a particular purpose.

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- IP Rights

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- Membership Plans
- Land Pricing & Use Fees

FAQs

Sample Trademark Usage License

Linden Research Trademark License (SAMPLE)

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Linden Research hereby grants you a nonexclusive, nontransferable, nonsublicenseable, revocable, limited license to use the SECOND LIFE trademark to identify only your goods and/or services that are either available in or related to the Second Life virtual world.

You may only use the trademarks, logos, service marks, trade dress, slogans, copyrighted designs or other brand features (collectively "Linden Research Marks") related to Second Life as explicitly licensed by Linden Research, and only under the terms and conditions and for the purposes described in such License.

All uses of any Linden Research Marks other than the SECOND

Trademark Usage Home

- Linden Lab Trademark and Usage Policy
- Linden Research Trademark License (SAMPLE)
- Distributing Second Life Software
- General Guidelines for Printed Materials and Web Sites

LIFE word mark must be approved in advance by Linden Research. You may request approval by completing and submitting the Request for Approval Form as detailed in the form. You must also include complete samples of each proposed use. Linden Research will typically review the request and respond within ten (10) business days, but is under no obligation to respond. You may not use the mark(s) as requested unless and until Linden Research has granted its specific approval and you have fulfilled any and all conditions of such approval.

You must ensure that the presentation of the Linden Research Marks will be consistent with Linden Research's own use of the marks in comparable media. From time to time during the term of the License, Linden Research may provide you with written guidelines as to the size, typeface, colors, and other graphic characteristics of the marks, which upon delivery to you shall be deemed to be incorporated into the License and into these Guidelines.

All trademarks and service marks will be designated with "SM", "TM" or "®", in the manner directed by Linden Research.

All products and/or services for which you use the mark licensed hereunder shall be of a nature and quality acceptable to Linden Research in its sole discretion. You shall not use or present any Linden Research Marks: a) in a manner that suggests that editorial content has been authored by, or represents the views or opinions of, Linden Research or any Linden Research personnel or affiliate; b) in a manner that Linden Research determines to be misleading, defamatory, libelous, obscene, infringing or otherwise objectionable; c) in connection with any material that infringes the trademark, copyright or any other rights of any third party; or d) in a manner that infringes, derogates, dilutes, or impairs the rights of Linden Research in its marks. Linden Research shall have complete discretion to evaluate your use and to decide whether that use violates any of the foregoing restrictions. In the event that Linden notifies you that your goods and/or services are not acceptable, you agree to immediately cease any and all use of the marks.

Any use of the Linden Research Marks shall inure to its benefit. You acknowledge that Linden Research is the owner of all of the Linden Research Marks and warrant that you will not take any action which is inconsistent with Linden Research's ownership thereof.

You agree to make any changes to your use of the Linden Research Marks as are requested by Linden Research. This remedy is in addition to any other legal remedies to which Linden Research may be entitled in relation to the its marks.

Linden Research makes no representations and/or warranties concerning the Linden Research Marks and explicitly disclaims any and all implied warranties including any warranties of noninfringement, merchantability, and/or fitness for a particular purpose.

- Services Related to Linden Software
 - Logos and Merchandise
 - Press Announcement Guidelines
 - FAQ

Second Life

About Second Life

EXHIBIT F: SECOND LIFE TRADEMARK USAGE POLICY FOR FANSITES
From the secondlife.com website of February 10, 2007

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Community: Fan Site Regulations

SECOND LIFE TRADEMARK USAGE POLICY FOR FANSITES

Thank you for your interest in operating a Second Life fansite or affiliate website! This policy statement describes the usage guidelines for the "Second Life" name and logo and other marks and intellectual property of Linden Research, Inc. ("Linden Lab").

A "Fansite" is a website created and maintained by residents or other devotees of Second Life, with content primarily focused on some aspect of Second Life.

The requirements for trademark usage differs slightly between Fansites and further differs between Commercial Fansites, which are Fansites that charge any access fee or offer goods or services for any fee or other consideration, and Noncommercial Fansites, which are Fansites that have no commercial purpose (with limited exception for advertising revenue from advertisements that comprise a minority of the content available on the website).

USE OF SECOND LIFE MARKS

While you are in full compliance with the usage guidelines described here, you may use the "Second Life" name on your website, as well as the related logos and graphics available at [Toolkit](#), solely in the form described there. Additionally, you may use screenshots from Second Life to the extent that Linden Lab has the right to authorize use of the content within such screenshot, including screenshots of Linden in-world objects and Linden avatars, subject to these usage guidelines.

REQUIREMENTS

Common Requirements

Required Trademark and Copyright Information. You must include the following information on your website: "Second Life® and Linden Lab® are trademarks or registered trademarks of Linden Research, Inc. All rights reserved. No infringement is intended."

No Title. You acknowledge and agree that no title or any other form of ownership to any intellectual property of Linden Lab has been or will be transferred to you.

Compliance with Policy. You agree to comply with this usage policy as currently stated and as may be amended from time to time in the sole discretion of Linden Lab, and that Linden Lab is the sole and final arbiter of interpretation of this policy.

Compliance with Laws. You may not use our name, logos or other marks or intellectual property in any manner, or in connection with any enterprise or purpose, that is in violation of applicable laws.

Intellectual Property Rights of Second Life Residents. Users of Second Life, also known as "Residents," have intellectual property rights in certain content they create in Second Life. Linden Lab does not license to you any intellectual property rights of Residents in these usage guidelines. You agree to comply with applicable trademark and copyright laws with respect to any usage of content created by Residents or other third parties.

Domain Names. You agree to refrain from using any domain name that closely mimics our proprietary domains, including secondlife.com and lindenlab.com.

Additional Requirements for Commercial and Noncommercial Fansites

Avoid Confusion. You agree to include some manner of designation within the website masthead or other prominent placement on the home page that indicates that the site is not owned or operated by Second Life or Linden Lab. Appropriate designations may include "fansite," "unofficial site," "unauthorized site," and the like - any questions regarding appropriate designation may be directed to a Community Manager at Linden Lab.

Additional Requirements for Commercial Fansites

Search Second Life

JOIN NOW

Free Basic Membership

Download Fansite Toolkit

For official Second Life logos, banners and backgrounds for use on your fansite, check out our [Fansite Toolkit](#).

Before using them, please make sure you've read our [Trademark Usage Policy](#) for Fansites and Affiliates.

Islands

Buy your own island today!

Got Questions?

Call us! 1 (800) 961-6851
Monday thru Friday, 9am-6pm PST.

No Branding. You may not use the Linden Lab or Second Life name, or the "Hand" logo, within your masthead or other primary branding for your website.

No Sale of Goods or Services. You may not use the Linden Lab or Second Life name, logos or other marks on any goods or services offered for sale on your website, whether physical, digital or virtual.

Screenshot Limitations. You may not use screenshots containing Linden avatars or objects or any comments or writings by Linden employees in any manner that may be construed as promotion of the sale of goods and services on your website.

No Derogation. You may not use the Second Life name, logos or other marks or intellectual property of Linden Lab in any manner that Linden Lab considers derogatory to Second Life or Linden Lab.

FAQ

1. Do I need a written license agreement to use Second Life marks as described here?

If you are in full compliance with these usage guidelines, you do not need an additional license agreement to use the Second Life name, marks and logos as described here.

2. Why do Commercial Fansites have different requirements from Noncommercial Fansites?

We support and encourage the creativity and free speech of our Residents. However, we must reserve the right to restrict use of our intellectual property for commercial purposes.

3. How does this policy affect Resident use of Second Life name and logos in-world?

Activities in-world are governed by our Terms of Service, available at <http://secondlife.com/corporate/tos.php>, and these usage guidelines for websites do not modify those Terms of Service in any manner.

4. Can I create stories, graphics, movies and machinima, and other "fan art" using Second Life names and logos?

Linden Lab encourages the creation of fan art, and will generally permit the use of Linden Lab and Second Life names and logos in noncommercial projects for personal use. Please remember that other Residents have intellectual property rights in content available in-world, and you should comply with applicable copyright and trademark laws.

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EXHIBIT G

Second Life COMMUNITY RESIDENT SITES from the secondlife.com website of
January 4, 2007

COMMUNITY

- Search
- Forums
- Events
- Volunteer
- Education

CONNECTIONS

Official Linden Blog

- Media
- Music
- Fashion
- Resident Sites
- Newsletter
- Mailing Lists

COMMERCE

- Classifieds
- Land Information
 - Land Pricing & Use Fees
 - Land Auctions
 - Land Store
- LindeX Currency Exchange
 - Buy L\$
 - Sell L\$
 - Market Data
 - Transaction History
 - Fees
 - Billing and Trading Limits

Economic Statistics

MY SECOND LIFE

- My Account
- Friends Online
- Feature Voting
- Refer-A-Friend
- Partners

SUPPORT

- Downloads
- Police Blotter
- Knowledgebase
- Known Issues

Community: Resident Sites

Second Life Residents show their colors with informative, creative, and entertaining fansites and blogs. From image galleries to downloads, blogs to forums, these sites are worth checking out! Here is a list of the most recent fansites.

If you'd like to add a site to these listings, please follow the instructions at the [bottom of the page](#).

Recently Added Forum Sites: [see more at del.icio.us »](#)

- SLInside (German)**
(Owner: Silvio Interflug)
- Syc0logy's Second Life - Forums**
(Owners: Christophor Lock and Hunter Fischer)
- *TUi* Technical User Interfacing Forums**
- SLorums.net**
(Owner: Toni Bentham)
- SLHomePage Forums**
- SecondLife Drama Forums**
- SL-Forums.com**
- Second Resident Forum**
(Owner: Sky Goodnight)
- "Yet Another Second Life Forum" - YASLF**
(Owner: Kristian Ming)
- Stratics Second Life Forums**
(Owner: Lewis Nerd)

Recently Added Resident Sites: [see more at del.icio.us »](#)

- SLBuzz.com - Second Life Community**
(Owner: Mark Barrett)
- Havernator**
(Owner: Haver Cole)
- "Get a Life"**
(Owner: Heartun Breaker)
- The AvaStar - Your world. Your voice.**
- Infinite Vision Media - Creating the metaverse one world at a time**
(Owner: Boliver Oddfellow)
- EdBoost Second Life Experiment**
(Owners: Tiplife Eggplant and Hector Something)
- Syc0logy's Second Life**
(Owners: Christophor Lock and Hunter Fischer)
- SLPixel**
(Owner: Adonis Action)
- PARATGE**
(Owner: Dpende Control)
- GridReview**
Second Life News Machinima
- Reperes Second Life -Market Research Institute**
(Owner: Reperes Link)

If you have a web site you'd like added to our growing list, please email pathfinder@lindenlab.com. If you're developing a site, check out the downloadable [Fansite Toolkit](#) for Second Life logos, banners and backgrounds for use on your site.

Search Second Life

JOIN NOW

Free Basic Membership

Fansites

Second Life fansites are powered by [del.icio.us](#). Use the tags below to view a complete list of sites in each category.

- [architecture](#)
- [blog](#)
- [charity](#)
- [commerce](#)
- [education](#)
- [fashion](#)
- [forum](#)
- [games](#)
- [international](#)
- [land](#)
- [music](#)
- [news](#)
- [photos](#)
- [scripting](#)
- [tutorials](#)
- [userinterface](#)
- [vehicles](#)
- [videos](#)

Download Fansite Toolkit

For official Second Life logos, banners and backgrounds for use on your fansite, check out our [Fansite Toolkit](#).

Before using them, please make sure you've read our [Trademark Usage Policy](#) for Fansites and Affiliates.

Islands

Buy your own island today!



Got Questions?

Call us! 1 (800) 961-6851
Monday thru Friday, 9am-6pm PST.



To be listed on this page, the site should meet basic website quality standards, and should be updated regularly. Excessive 404 errors, pop-ups, and javascript errors can make even a great website frustrating for your viewers. Information on your site should be organized and easy for visitors to find.

Ideally, your site will have updated banners and logos (available from our [Fansite Toolkit](#)), with links to the Second Life registration page to encourage others to join! In addition, the site must have a reasonable amount of content. Please do not submit one-page sites, or sites that are mostly "Under Construction". We know it takes a lot of work to build a great site, but it's better to submit when you're done than when you're only halfway there.

Note: Before submitting your site, please be sure to read the [Second Life Trademark Usage Policy for Fansites](#).

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EXHIBIT H

Linden Research, Inc. application for SL trademark, June 5, 2007

Document Description: **Application**
 Mail / Create Date: **05-Jun-2007**

[Previous Page](#)

[Next Page](#)

You are currently on page 1 of 2



PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77198345

Filing Date: 06/05/2007

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77198345
MARK INFORMATION	
*MARK	SL
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	SL
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
APPLICANT INFORMATION	
*OWNER OF MARK	Linden Research, Inc.
*STREET	945 Battery Street
*CITY	San Francisco
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	94111
PHONE	(415) 243-9000
FAX	(415) 243-9045

EMAIL ADDRESS

licensing@lindenlabs.com

AUTHORIZED TO COMMUNICATE VIA
EMAIL

Yes

LEGAL ENTITY INFORMATION

*TYPE

CORPORATION

*STATE/COUNTRY OF INCORPORATION

Delaware

GOODS AND/OR SERVICES SECTION

INTERNATIONAL CLASS

009

DESCRIPTION

Software that is used for providing multi-user access to an on-line 3D virtual environment; computer 3D virtual environment software.

FILING BASIS

SECTION 1(b)

GOODS AND/OR SERVICES SECTION

INTERNATIONAL CLASS

038

DESCRIPTION

Communication services in the nature of text messaging and electronic mail services used in an online virtual environment.

FILING BASIS

SECTION 1(b)

GOODS AND/OR SERVICES SECTION

INTERNATIONAL CLASS

041

DESCRIPTION

Providing an on-line 3D virtual environment; providing an on-line 3D virtual environment that may be accessed by means of communications networks; multimedia and 3D virtual environment software production services.

FILING BASIS

SECTION 1(b)

CORRESPONDENCE INFORMATION

NAME

Linden Research, Inc.

FIRM NAME

Linden Research, Inc.

STREET

945 Battery Street

CITY

San Francisco

STATE

California

COUNTRY United States
 ZIP/POSTAL CODE 94111
 PHONE (415) 243-9000
 FAX (415) 243-9045
 EMAIL ADDRESS licensing@lindenlabs.com
 AUTHORIZED TO COMMUNICATE VIA EMAIL Yes

FEE INFORMATION

NUMBER OF CLASSES 3
 FEE PER CLASS 325
 TOTAL FEE DUE 975

SIGNATURE INFORMATION

SIGNATURE /Catherine Smith/
 SIGNATORY'S NAME Catherine Smith
 SIGNATORY'S POSITION Trademark Administrator
 DATE SIGNED 06/05/2007

FILING INFORMATION SECTION

SUBMIT DATE Tue Jun 05 18:28:39 EDT 2007
 TEAS STAMP USPTO/BAS-76.204.199.142-
 20070605182839119231-7719
 8345-370308b553210ed15852
 ef93e2586e27e43-CC-2885-2
 0070605182433761082

PTO Form 1478 (Rev 9/2006)
 OMB No. 0651-0009 (Exp 09/30/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: 77198345

Filing Date: 06/05/2007

To the Commissioner for Trademarks:

MARK: SL (Standard Characters, see mark)

The literal element of the mark consists of SL. The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Linden Research, Inc., a corporation of Delaware, having an address of 945 Battery Street, San Francisco, California, United States, 94111, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 009: Software that is used for providing multi-user access to an on-line 3D virtual environment; computer 3D virtual environment software.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 038: Communication services in the nature of text messaging and electronic mail services used in an online virtual environment.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 041: Providing an on-line 3D virtual environment; providing an on-line 3D virtual environment that may be accessed by means of communications networks; multimedia and 3D virtual environment software production services.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

Correspondence Information: Linden Research, Inc.

945 Battery Street

San Francisco, California 94111

(415) 243-9000(phone)

(415) 243-9045(fax)

licensing@lindenlabs.com (authorized)

A fee payment in the amount of \$975 will be submitted with the application, representing payment for 3 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Catherine Smith/ Date Signed: 06/05/2007

Signatory's Name: Catherine Smith

Signatory's Position: Trademark Administrator

RAM Sale Number: 2885

RAM Accounting Date: 06/06/2007

Serial Number: 77198345

Internet Transmission Date: Tue Jun 05 18:28:39 EDT 2007

TEAS Stamp: USPTO/BAS-76.204.199.142-200706051828391

19231-77198345-370308b553210ed15852ef93e

2586e27e43-CC-2885-20070605182433761082

TDR Home

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FAQ: Are you seeing only the first page of this PDF document?

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- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail Electronic Business Support, or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail USPTO Contact Center (UCC).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.