

Pakistan lawyers on the front line

BY LAURA MACINTYRE

LAWYERS IN Pakistan have been arrested for participating in a three-day protest and boycott of the government.

International news agencies have reported that protests in Lahore, Karachi and Rawalpindi have been violently broken up by police using tear gas and batons. It is estimated that 200 lawyers have been arrested.

The International Bar Association's Human Rights Institute (IBAHRI) has spoken out about the developments

and the breakdown of the rule of law in Pakistan.

"The IBAHRI calls upon the Government of Pakistan to abide by the rule of law and reminds it that a state of emergency may only be called when the life of the nation is under threat. Until such time the constitution should be applied in full," said Justice Richard Goldstone, IBAHRI co-chairman.

Pakistan has been under emergency rule since 4 November, after President Pervez Musharraf sacked the nation's top

judge and suspended the Constitution.

Critics have suggested that the state of emergency was called to pre-empt a pending decision by the Supreme Court about the legitimacy of the presidential election results. In early October, President Musharraf received 98 per cent of the electoral vote, prompting a challenge in the Supreme Court.

President Musharraf issued a television broadcast on 3 November claiming the suspension of the constitution was due to a rise in extremism by courts and judges. Since then, Chief

Justice of the Supreme Court Iftikhar Muhammad Chaudhry has been placed under house arrest; the Supreme Court was dissolved and privately-owned television news channels shut down.

"Although Pakistan's Constitution protects the independence of judges, the IBAHRI believes that the government has subverted judicial independence by sanctioning the arrest of judges, instructing police to enter the Supreme Court and by making public statements undermining judicial authority," Goldstone said.

Second Life a law unto itself

BY DAVID HOVENDEN

THE RULE of law could be the missing ingredient for the wholesale adoption of virtual worlds, such as Second Life, by business as genuine marketplaces worthy of serious investment and development.

A forum hosted by Gilbert + Tobin last week called *The Net Generation – Alternative Realities* saw an extended discussion on the impact of virtual worlds on consumers and business. As part of a panel discussion hosted by Gilbert + Tobin partner Peter Leonard, the question of what legal protection both businesses and individuals are afforded when they venture into a virtual world was discussed vigorously by both the panel and audience members alike.

Delegates attending the forum discussed problems associated with individual participants, known as avatars, in virtual worlds such as Second Life have virtually no legal protection other than that offered to them by their contract with that world's creator. Second Life, developed by Linden Lab, is a 3-D virtual world entirely created by its residents, accessed via the internet and inhabited by more than 10 million users from around the globe.

"At this stage, an avatar has no rights other than the rights that the person propelling that avatar gets through the contract with Linden Lab or local participation by buying in to a certain structure of rights and obligations when that person visits a place like a Telstra island and buys land on it," said Leonard.

"So in general, there's a sort of layer of contractual rights that come in through the Linden Lab contract and real estate contracts with owners of islands. Then there is the law – there are the laws of the various countries in which people are residing that protect their personal information. But in next to no countries – I think Korea might be an exception – the law has not yet



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developed specific rights around virtual beings as virtual things."

Different to other virtual worlds, when an individual signs a contract with Linden Lab to join Second Life, Linden Lab assigns the IP rights to the person that created the avatar. So where in other virtual worlds the owner of the program retains copyright and ownership of the creations within that space, this is not the case. The result of course has been that others have been able to make millions of dollars in the real world based on their activities in Second Life. However for mainstream corporations, Second Life remains a potentially very dangerous world devoid of usual risk management practices and legal protections.

However Leonard argued that the lawlessness of Second Life was quite possibly a construct of the desire of the individuals inhabiting that virtual world.

"There's an interesting question around what rights people would want to have in Second Life as well, in that a lot of people go to Second Life to experience different realities, to test an edgy existence and I query the extent to which the law defines certain irreducible rights and obligations that people have, even when they're being edgy and the extent to which those rules should reflect the real world.

"I think there is a real case that Linden Lab puts for this to be a much freer and open space than the real world ... There's a real demand from people for an escapist environment where they can try different identities and realities. Is there a harm in that?"

Yet while Leonard was upbeat about this "edgy" alternative existence remaining largely unregulated, many members of the audience expressed real concern about the lawlessness of the space.

"Big companies are putting up shop fronts and stuff. Eventually someone is going to buy something. But what happens to us? What protection is there for the human in the long run? Are purchases binding on Second Life as they are on eBay, for example?" one member of the audience asked.

"Well, that just shows the value of brands, doesn't it? I mean, you deal with the brand in Second Life, you've got all the protection that brand brings. If that corporation doesn't supply you, that's misleading and deceptive conduct just as it is in real life," responded Leonard.

Similarly, misuse of brands was an area of concern raised by the audience, to which Leonard suggested that the principle challenges lay in establishing jurisdiction against a party who's misusing the brand and of course, estab-

lishing who that person is and proving it. "So it's your classic international internet-based problem of finding the bad guys and finding an economically viable way of bringing them to heel.

"At least in Second Life you have the advantage of that there is the service provider, Linden Lab, who have, as it were, a financial stake in the game of keeping that space safe, whereas with the internet, there is nobody that is equivalent," he said.

Other areas of concern included potential copyright infringements where buildings in Second Life are modelled on actual buildings in the real world.

The ABC, which has a significant presence in Second Life, has already wrestled with some of these problems insofar that its space in Second Life has recreated some of the laneways of Melbourne, the architects of which seemingly would have some claim to.

"The whole area around copyright and architectural plans and buildings is really problematic at the moment. The short answer is that architects have some rights, so do buildings that are built to their plans and those plans might [as well]. Those rights might extend into Second Life.

"I mean, there's already an enormous legal infrastructure around the games business of clearing rights to things like ... the date and track and buildings. And no major video game would come out today where there hasn't been an army of lawyers crawling over it, getting rights clearances for all visibly recognisable brands or places like a racetrack. I imagine that Second Life will become a lawyers' area like that in time as well," said Leonard.

"The neat thing about it is it's the virtual world. So if there's trouble, you pull it down. What people suffered, what damages can they prove? So it's not like a video game that you put into a market ... [And if] you've got to pull it, you've got the enormous cost of pulling it out from the market," said Leonard.