

Virtual Persons + Virtual Goods = Real Problems

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Abstract. Virtual Worlds have become serious business models and thus gained the attention of law professionals. The legal problems arising out of Virtual Worlds have started a discussion which will be summarized in this article. Moreover arguments will be delivered which can be used to protect users of those Virtual Realities.

Keywords: Virtual Worlds, Legal Problems, E-Commerce, Virtual Person.

1 Introduction and Definition

Virtual Worlds, Augmented Reality and Web 2.0 have had a huge impact on modern society. It is estimated that about 550 million avatars “live” in Virtual Worlds¹. With about 40 million real people controlling these avatars one can imagine that the interactions need legal attention to ensure that every participant has legal security while acting as a virtual person. In its 2008 Report, the Internal Revenue Service (IRS) states: “*Economic activities in virtual worlds may present an emerging area of tax noncompliance, in part because the IRS has not provided guidance about whether and how taxpayers should report such activities.*” The IRS identified over US\$1 billion in revenues directly made in Virtual Worlds in 2005. Virtual Goods, also known as “items”, will be worth nearly US\$2.5 billion by 2013². This paper focuses on the most important legal issues witnessed in Virtual Worlds at the moment. First of all, it will address issues regarding contract law, and second copyright issues arising from disputes on the question “Who owns the virtual sword?”. Therefore a brief glance at legal disputes regarding Virtual Worlds will be provided. The conclusion will summarize the findings and lead to a proposal to lawmakers around the world.

Virtual Worlds are gaming. Period. Most Virtual Worlds are “Massively Multiplayer Online Role-Playing Games” (MMORPG) by definition and have been very popular for generations. The history of Virtual Worlds goes back to the first “Multi User Dungeons” where players could fight dragons together and gathered their first items by looting the dragon’s corpse. Today we can still find the terminology in the “DKP system” – “DKP” meaning “Dragon Kill Points” – used by players to

¹ http://www.kzero.co.uk/blog/?page_id=2563

² <http://www.emarketer.com/Article.aspx?R=1007226>

divide the loot when successfully winning an encounter in any Virtual World. The most popular virtual gaming world is the MMORPG “World of Warcraft” with more than 11.5 million paying subscribers³. The popularity of the game has caused many an addiction, which has already alerted governments⁴ and the media⁵. But the evolution of virtual worlds into social virtual worlds began with Linden Lab's Second Life⁶ entering the field and has proceeded to Virtual Worlds for working professionals⁷. The research done by consultants such as KZERO⁸ shows that socializing virtual worlds are on the rise and infiltrate society just as Facebook and Youtube are doing right now. To separate Virtual Worlds from these social networking websites I will try to define measurement categories for Virtual Worlds:

1. coded
2. ability to interact with others (through voice or chat)
3. 2-D or 3-D visualized reality
4. persistency
5. run in real-time
6. client- or browser-based

All these factors have to be seen as cumulative.

Virtual Worlds themselves have to be separated into two major categories: **virtual gaming worlds (VGW)** and **social virtual worlds (SVW)**, which can again be subdivided within the respective categories. The distinction is important to apply legal opinions, because e.g. the “murder” of another player may be the main objective of a virtual gaming world, while doing so in a social virtual world can be considered “mobbing”. The average age of Virtual World users is 14⁹. Taking into account what has been said in the introduction, these under-age citizens are primarily responsible for the more than US\$ 1 billion in revenue from Virtual Worlds in the U.S. alone. This amount mostly comes from the creation or trading of virtual items, which is linked to real-life money. Sometimes it is linked legally, like in Entropia¹⁰, where the Virtual Currency “PE Dollar” is exchanged to the US Dollar with a rate of 10:1, or illegally, like the gold trading in World of Warcraft. The last example is a legal issue commonly known as “gold farming” and provides work for about 400,000 people mostly living in China¹¹. Having shown that many people are playing, interacting, trading or working in Virtual Worlds, unaccounted for if in VGWs or SGWs, we have to determine which kind of legal rules should be applied to their behavior and how their actions are protected by law.

³ <http://www.wow.com/2008/12/23/world-of-warcraft-hits-11-5-million-subscribers>

⁴ China opened a net addiction center in 2005, see: http://www.theregister.co.uk/2005/07/05/china_net_addicts

⁵ <http://edition.cnn.com/2008/BUSINESS/01/29/digital.addiction/index.html>

⁶ <http://secondlife.com>

⁷ See for example: <http://www.teleplace.com> or <https://lg3d-wonderland.dev.java.net>

⁸ <http://www.kzero.co.uk/blog>

⁹ <http://www.virtualworldsnews.com/2009/07/virtual-world-popularity-spikes.html>

¹⁰ <http://www.entropiauniverse.com>

¹¹ http://www.sed.manchester.ac.uk/idpm/research/publications/wp/di/di_wp32.htm

2 Virtual Persons

Virtual Worlds are non-real. Period. As *Koster*¹² states, “Someday there won't be any admins. Someday it's gonna be your bank records and your grocery shopping and your credit report and yes, your virtual homepage with data that exists nowhere else.”¹³ When at the beginning of Virtual Worlds VGWs were in the majority and killing dragons or solving adventures collaboratively online were the main purposes with no or just minimal ingame trades which could be linked to real-life money, the players did not need any legal protection. They were just enjoying some leisure-time. But when with the beginning of SVWs players evolved into users, the leisure aspect was about to disappear and serious money could be made. As stated, since the huge amounts made in Virtual Worlds are recognized by tax authorities, it must be clear that the entities participating in this business are in need of legal certainty. It is obvious that there is a big difference between a trade on the internet and a trade in a Virtual World. On the internet the host provider is not as powerful as the provider of a Virtual World. The reason is that the host provider in the internet provides the framework in which the content provider can create his Webspaces. This Webspaces must obey the rules and regulations set by the technical framework of the internet itself, which gives the power of creation to the user. In Virtual Worlds this is different. The provider has the power to determine which ways of creation a user can choose from. While in most SVWs this freedom is very advanced – e.g. in *Second Life* the user can create content freely with the “*Linden Scripting Language*” – in VGWs the possibility tends to zero. The “freedom” of creation is regulated in the “*End User License Agreements*” (EULA), also called “*Terms of Use*” (ToU) or “*Terms of Service*” (ToS). The contractual determination of rights can often be classified as autocratic and therefore the user is strongly dependent on the provider¹⁴. Therefore the liability of a user towards a contractual relationship to another user must be judged in consideration of the General Terms and Conditions established by the provider. Right now protection for the real person controlling the virtual person is very weak.

3 Virtual Goods

Virtual Worlds are business. Period. Trades related to Virtual Worlds have found their way to the classic internet. Auctioneers of virtual goods like *FatFoogo*¹⁵ have established platforms which are often threatened by lawsuits from the respective providers. eBay has closed all auctions¹⁶ regarding Virtual Worlds (let alone *Second*

¹² *Koster*, “Declaring the Rights of Players” in *State of Play* (2006) 55.

¹³ See also: *Erenli/Sammer*, „Der Gnom zahlt nicht – Muss die Rechtsordnung der Zukunft die virtuelle Person anerkennen?“ in *Schweighofer*, *Komplexitätsgrenzen der Rechtinformatik* (2008).

¹⁴ Just think what would happen, if Blizzard canceled all subscriptions and abandoned *World of Warcraft* all of a sudden. The outrage of the community would most likely end in real-life riots.

¹⁵ <http://www.fatfoogoo.com>

¹⁶ http://news.cnet.com/eBay-bans-auctions-of-virtual-goods/2100-1043_3-6154372.html or <http://games.slashdot.org/article.pl?sid=07/01/26/2026257>

Life) and *Hani Durzy*, spokesman for eBay¹⁷, has stated that "*the seller must be the owner of the underlying intellectual property, or authorized to distribute it by the intellectual property owner*". Therefore the question: "Who owns the virtual sword?"¹⁸ has been answered taking into account copyright law. The owner of the Virtual World is the provider who determines which kind of copyright is given to a player or user through the General Terms and Conditions (EULA, ToU, ToS, etc). Since copyright law follows the principle of territoriality we can then discuss which copyright law applies to items created by a user of a Virtual World. This question is most often answered by the General Terms and Conditions as well, which determine the applicable law. In the absence of such an agreement the copyright law of the permanent establishment of the provider should apply. This solution is used with regard to the "Virtual Society". Since Virtual Worlds can usually be accessed by anyone around the world it would lead to legal uncertainty if the applicable law of the respective user had to apply. Instead of understanding just one copyright law, each user would have to understand multiple ones. Despite the fact that copyright law gives the necessary legal protection to the provider, it leaves the player or user powerless. This problem is a general one. While the World Wide Web is decentralized, a Virtual World is controlled by its provider. Therefore the statement "*I create the games that you will play, I make the rules you have to obey*" is a very true one. Lawmakers have to consider how to react in such a way that both parties – provider and player or user – are protected equally.

4 Real Problems

Virtual Worlds are dangerous. Period. Most societies fear Virtual Worlds as a place which is responsible for the degeneration of the world's youth. Some fear that Virtual Worlds are a place where laws do not apply. Regardless of individual personal opinions on Virtual Worlds the fact remains that disputes in Virtual Worlds have ended up in real-life courts often enough. Therefore some of the most popular disputes related to intellectual property rights are described hereafter.

4.1 Eros vs Leatherwood¹⁹

The first big dispute in Second Life was about a copyright infringement. The plaintiff Eros, LLC, owned by *Kevin Alderman*, a maker and seller of virtual adult-themed objects within the Second Life platform, sued defendants and alleged that they had made and sold unauthorized copies of plaintiff's virtual products within Second Life using the plaintiff's trademark. At first it was uncertain who was in control of the avatar "*Volkov Cattaneo*", who was "stealing" the source code of *Alderman's* products and selling the cloned products to other avatars for a price far less than requested by Eros. The case was won by Eros in 2008 after the court had found the right defendant. While in the US a complaint can be made against an unknown defendant – addressed as "*John Doe*" – in Europe such a complaint would be dismissed by the court from

¹⁷ <http://pages.ebay.com/choosingformats/digitalitems/faqs/#3>

¹⁸ Also see: *Benkler*, There Is No Spoon, in *Belkin/Novecek*, The State of Play 180.

¹⁹ <http://news.justia.com/cases/featured/florida/flmdce/8:2007cv01158/202603>

the start. *Kevin Alderman* also was the plaintiff in the next big case regarding Second Life. He launched a class-action lawsuit against Linden Lab itself in September 2009, alleging that (among other things) it profits from negligence and delay in dealing with trademark and copyright infringement issues, and that it does so knowingly. The case has just begun and it will be very interesting to witness its outcome.

4.2 Marvel vs City of Heroes

Marvel Comics is the publisher of popular comics such as Spider-Man, The Hulk or X-Men²⁰. Marvel filed for trademark infringement after taking a look at the Virtual World “City of Heroes”. In this Virtual World users have the possibility to create their avatars to appear as look-a-likes of the Marvel comic heroes. The case was settled in 2005 with a confidential agreement. Marvel recognized the users' power and therefore did not push for a court decision.

4.3 Blizzard vs MDY Industries²¹

Blizzard Entertainment, the creator of World of Warcraft, filed a complaint against MDY Industries, LLC, creator of the WoWGliders program. WoWGliders was a third-party program created by the owner of MDY, *Donnelly*, to circumvent the need for a player to be present during World of Warcraft sessions. He achieved this by setting elaborate scripts to automatically perform quests and hunts. *Donnelly* charged US\$25 for the key to unlock the program. Blizzard successfully proved that *Donnelly* breached the agreement made in the EULA.

These lawsuits demonstrate that problems arising out of Virtual Worlds can be solved by applying already existing laws. So do we need to focus on Virtual Worlds from a legal point of view?

5 Conclusion

Business models and user behavior are changing. The legal rules which have to be applied to these changing realities already exist. The task at hand therefore is not to ask for new rules but to change the existing ones to equally protect providers, players and users. Therefore Virtual Worlds should be categorized in VGWs and SVWs. Moreover a supervisory body should be implemented to help harmonize the different intellectual property laws and the different solutions law systems provide. The power of the provider once was limited to providing the technical infrastructure and possibilities for users to interact. By now these interactions have advanced to a life that can be lived parallel to the real one. Therefore the power of the provider has increased in a way that can harm society in both worlds. Hence a discussion on the protection of the Virtual Person is strongly needed. For Virtual Worlds are just like real life. Period.

²⁰ <http://www.marvel.com>

²¹ <http://www.wowgliders.com/Legal/Feb%5F16%5F2007>

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