

---

# On Legal Issues in Virtual Worlds

Prof. Dr. Gerald Spindler  
University of Göttingen, Germany

Virtual Worlds: Trust, Security, Rule of Law  
(TrustVWs 2009)

UCM 2009

# 1 Introduction

---

- Summary of results of research within EU FP7–Project “Virtual–Life”

[www.ict-virtuallife.eu](http://www.ict-virtuallife.eu)

- Just legal framework regarding the areas of
  - Real–world concepts in virtual worlds
  - Data protection
  - Copyright
  - Trademarks
  - Protection of minors
  - Advertising in virtual worlds
  - Provider liability for user–generated content
  - Dispute resolution

# 1.1 Legal Subjects

---

- Avatar is just the means the user acts through
- The only legal subject is the user

# 1.2 Typical Relationships in Virtual Worlds

---

1. User – Provider
2. User – User
3. User – Service Provider

# 1.3 Implementation of Laws

---

## 1. Customisation of the virtual world platform

- Private individuals do not have legislative power
- Contractual Agreements (EULA, ToS)

## 2. Certain state's legal system and jurisdiction

# 2 Transferring Real-World Concepts to Virtual Worlds

---

## 2.1 Virtual World Property

### Contra

- Lack of tangibility
- Temporal limitation
- Sufficient protection under contract, criminal and intellectual property law

### Pro

- Tangibility is not a mandatory requirement for protection in every legal system
- There are other types of property with temporal limitation
- Given protection does not prevent additional protection from the outset
- Absolute rather than a mere contractual right
- Denial of protection may lead to artificial restraint on transference of wealth

# 2 Transferring Real-World Concepts to Virtual Worlds

---

## 2.2 User Evaluation Systems

### ➤ Trust

#### ➤ Reputation: Evaluation Systems

Freedom of Expression  $\Leftrightarrow$  Protection of one's personality

- Feedback has to be protected by freedom of expression

(Germany: Distinction between statements of fact and value judgements; no protection for false statements of fact or abusive criticism)

- Removal of feedback if personal rights outweigh right to freedom of expression

# 3 Data Protection

---

Authentication methods

Right of informational self-determination

- Art. 8 Charter of Fundamental Rights of the European Union
- EC–Data Protection Directive

# 4 Copyright Issues in Virtual Worlds

---

Protected subject-matter:

1. Items created for the virtual world itself  
(e.g. Avatar, virtual building and clothing)
2. Content existing independent of the software  
(e.g. Videos, photos, music or narratives)

# 4.1 Legal Framework

---

## 4.1.1 Protection Criteria

- Form

No protection for the mere idea behind a work but only for its expression

- Content

1. Subject matter

- Exhaustive or non-exhaustive lists of protected subject-matter

2. Originality or Creativity

- Status of the author or the work  
(nationality or place of residence/place of publication)

## 4.1 Legal Framework

---

### 4.1.2 Beneficiaries of protection

1. Person in favour of whom the rights are granted or
2. by whom rights may be exercised

- Initial beneficiaries

Persons whom the law indicates as the first owners of the rights granted

- Subsequent beneficiaries

Persons to whom all or some of the rights of the initial beneficiary have been transferred

# 4.1 Legal Framework

---

## 4.1.3 Objects of Protection

- Software
- Virtual world's concept
- Multimedia representation

## 4.2 Eligibility for Protection of In-world created Items

---

- Avatar
  - Visual depiction
  - Unique persona
  
- Virtual Items

## 4.3 Copyright Infringements and Exploitation of Rights

---

- Unauthorised use of copyrighted material
  - Copying of virtual items
  - Making available of traditional media

# 5 Trademark Issues in Virtual Worlds

---

## 5.1 Protection of In-World Trade Marks

Justifications for legal protection of trademarks:

1. Guarantee of origin of goods and services
  2. Investment or advertising
  3. Manifestation of creativity
- In-world trademarks are not excluded from protection from the outset

# 5 Trademark Issues in Virtual Worlds

---

## 5.2 Protection against Virtual Knock Offs

Scenarios:

1. Using a real-world trademark on virtual items
2. Applying a trademark to other virtual items the trademark owner is not associated with

Art. 5 EC Trademark Directive:

- Double identity
- Confusing similarities
- Taking unfair advantage or being detrimental to distinctive character or repute
- Infringing non-registered trademark rights
  - Use in course of trade

# 6 Protection of Minors in Virtual Worlds

---

1. Preventing of Access to non-suitable content
  2. Measures against usage of the Internet for distribution of child pornography or for child grooming
- Access Verifying Systems  
Because of access in various states strictest standards have to be met
  - Preventing child abuse  
Preventing access to and deleting content
  - Child grooming  
Verification of the user being below a certain age

# 7 Advertising in Virtual Worlds

---

- Static advertisement
- Dynamic advertisement
- Product placement
- Multi-dynamic advertisement

## Restrictions:

- Unfair commercial practices
  - Data protection law
  - Protection of minors
  - Regulation of audiovisual media services
  - Restrictions relating to specific products
  - Third parties rights
- Same obligations as in the real world if no constraints in the applicable law

# 8 Provider Liability for User-generated Content

---

Distribution of user-generated content may infringe other persons' rights or community sensibilities

- Liability of the user
- Liability of third parties
  1. Access Provider  
Very limited liability
  2. Software Provider  
Liability requires providing the software to be sufficient
  3. Host Provider  
Immunity from Liability requires instant removal of illicit content after obtaining constructive knowledge

# 9 Dispute Resolution in Virtual Worlds

---

## 9.1 Applicable Law and Jurisdiction

- Rome Convention
- Rome-II-Regulation
- Choice of law

# 9 Dispute Resolution in Virtual Worlds

---

## 9.2 Online Dispute Resolution (ODR)

Providing a platform for the settlement of legal disputes outside the traditional bodies of a state's juridical system

Advantages:

- Dispute settlement independent from governmental bodies
- Reduction of transaction costs
- Availability

Risks:

- Confidentiality
- Transparency
- Authenticity

# 9 Dispute Resolution in Virtual Worlds

---

## 9.2 Online Dispute Resolution (ODR)

### Legal Aspects:

- Validity of ADR clauses
- Suspension of limitation periods
- Enforceability of arbitral results  $\Rightarrow$  contractual agreement

# 10 Conclusions

---

- Final legal assessment hinges on the concrete scenario
- Effects of the virtual environment need to be considered
- Most legal problems are already known from the real world
- Risks of the new environment have to be taken into account