

Relationship between the virtual and real law

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Virtual world without any (codified governmental) virtual law



The need to apply “real law” to virtual worlds

“real world”
jurisdiction

“real law”



Possibly affected fields of “real law”



1. Intellectual property rights

Virtual items as creations protected by copyright laws

- **e.g. the virtual replica of the Cologne Cathedral in SL:**
 - **District court of Cologne: Virtual items could in principle benefit from protection under real world copyright laws**
 - **virtual goods require a certain level of individual creation**
 - **no need to classify virtual items as multi-medial works, as long as they can be filed under the existing types of creations (e.g. images, compositions etc.)**

1. Intellectual property rights

Consequences for virtual commerce

- the creator of a virtual item gains author's moral rights
- disposition regarding virtual items have to follow the statutory provisions of the German Copyright Act (UrhG): §§ 31 ff. → licencing
- the purchase of a licence leads to the application of the statutes of sales law under the German Civil Code (BGB): § 453 in conjunction with §§ 433 ff.
- copyrights (regarding virtual items) take effect inter omnes, yet they are dependent on an active account with the specific virtual world

2. Author's moral rights

Consequences of the tie between the creator and the virtual item

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|--|--|
| <p>a) towards other users <u>and</u> the virtual world's operator</p> <ul style="list-style-type: none">- §§ 12 ff. UrhG- No damnification or deformation may be done to virtual item | <p>b) towards the virtual world's operator / owner of the server</p> <ul style="list-style-type: none">- § 25 I UrhG- In case a user wishes to transfer his virtual items to another virtual world, he possibly has a right to free access to his creation- Also might apply to a user's wish to have her/his avatar 3-dimensionally-printed in the "real world" |
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3. Property law

Ownership of the servers

- the data necessary to display the virtual items are stored on servers owned by the virtual worlds' operators
- the users cannot claim ownership as defined by § 90 BGB since virtual items are not corporeal objects and therefore do not count as things defined by law
- the intellectual property rights of the users are subject to the approval of the world's operator and rely on an active account

The right to ban a user

- the ownership of the servers grants the operator the right to ban a user from the virtual world as part of a domestic authority if there is a reasonable cause
- e.g. *Bragg v. Linden Lab*

4. Contract law

Virtual items as the object of an act of sale

- §§ 453, 433 BGB: also intellectual property rights can be the object of an act of sale
- the contractual rules of commerce concerning corporeal objects are congruently applied to virtual goods
- the usual and typically to be expected conditions of the items arise out of the specific virtual world and its given conditions

ToS / EULA

- the validity of the ToS / EULA is to be proved by comparison to the German Civil Code's statutes regarding contract law (e.g. §§ 305 ff. BGB)
- the operators' ToS might be regarded as a provision in favor of a third party, (e.g. *Hernandez v. IGE*, ruling expected in early 2009)

5. Tort law

Highest relevance in virtual worlds

- incidents of insulting behavior and acts of aggression against a player's avatar
- the characteristics for a certain virtual world have to be taken in account when judging a participant's behavior: WoW ≠ Second Life

Scope of the interference

- relevant question: Is a user affected if her/his avatar is affected? This goes along with aspects of a possible virtual personality right
- e.g. *Anshe Chung Debacle* → Closer look at the issue by Dr. Ulf Müller

6. Anti-trust law

Range of application

- the application of anti-trust law has not been very important so far
- relevance will increase as soon as the transfer of virtual items / characters in between different worlds increases
 - Lock-in-effect of the worlds' operators to keep users
 - requires the technical and intentional possibility to switch between worlds, e.g. no use for an anti-dragon sword in a virtual world based on social interaction
- compares to software monopolies in the real world such as in the case of *the European Union v. Microsoft*

7. Public media law

Liability (of the worlds' operators)

- operators' liability concerning one user's behavior towards another user
- operators' liability for the loss of virtual items due to technical failures
- validity of the ToS regarding such matter

Differing legal systems

- differences of the national codified statutes, e.g. age-play including clearly virtual, yet underage-resembling avatars
- questions of requirements of access to a virtual world an operator has to fulfill

8. Other areas of “real law“

Additional possibly affected areas of “real law“

- the application of real-world tax laws to in-world virtual commerce (e.g. the IRS' ruling on necessary health insurance for employees of the in-world-quarters of an enterprise)
- gambling and the prevention of addiction
- youth protection and the decision as to where to file a complaint with connection to behavior in virtual worlds
- patents

Thank you for your attention!