

# Bachelor's Thesis

## New Generation for Human Rights in Cyberspace

Submitted on 25 April 2008

By

Pekka Kijanen

Supervisor

Adjunct Lecturer, Marianne Meiorg, LL.M

International University Audentes

Law School

## Declaration

I hereby solemnly declare that I have written this thesis by myself and without support from any other person or source, that I have used only the materials and sources indicated in the footnotes and in the bibliography, that I have actually used all materials listed therein, that I have cited all sources from which I have drawn intellectual input in any form whatsoever, and placed in “quotation marks” all words, phrases or passages taken from such sources verbatim which are not in common use and that neither I myself nor any other person has submitted this paper in the present or a similar version to any other institution for a degree or for publication.

Helsinki, 25 April 2008

Pekka Kijanen

## Table of Contents

1. Introduction.....	4
2. Can Individuals Violate Human Rights?.....	7
2.1 State versus non-state actors.....	8
2.2 Privatization of Human Rights.....	10
2.3 Individual Responsibility According to International Laws.....	12
3. The Perils of Human Rights protection in the Digital Age.....	16
3.1 Cyber Exploitation and Virtual Pornography.....	16
3.2 Liability of the Internet Service Providers.....	18
3.3 Cyber Censorship and Digital Surveillance.....	19
4. International Jurisdiction in Cyberspace.....	22
5. Virtual Worlds: a Completely New Platform of Ideas.....	26
5.1 Implementation of Human Rights Laws to Virtual Worlds.....	28
5.2 The Importance of Human Rights Protection in Virtual Worlds.....	31
5.2.1 Right to Property.....	31
5.2.2 Right to Privacy.....	34
5.2.3 Freedom of Speech.....	37
5.2.4 Discrimination and Access to Justice.....	39
6. Proposed Solutions and Some New Ideas.....	43
7. The Future of Human Rights in the Digital Age.....	46
8. Conclusion.....	48
References.....	51
Table of Legislative Acts.....	54
Table of Cases.....	56
Glossary of Abbreviations, Acronyms and Terms.....	57

## **1. Introduction**

A new era for human rights law has emerged as the virtual environment challenges our traditional notion of fundamental rights and freedoms. As a result of information and computing technology, it is possible to plug oneself into an alternative reality to have fun and meet others without actually being physically present. Virtual worlds are rapidly becoming the matrix of human life but at the same time they offer an ideal surface for committing different kind of violations to our liberty and dignity. It is absolutely essential to theoretically analyze the reach of human rights protection in cyberspace, especially in the context of virtual worlds.

At first, however, it is necessary to analyze the scope of human rights protection according to present international doctrines. Human rights laws have generally applied in a vertical level as they have limited states' authority and powers against individuals. However, from the very beginning of postwar days, scholars and international community recognized the need for a re-evaluation as the aftermath of the World War II revealed severe human rights violations that were committed by individuals. Since then, the ambit of human rights protection has expanded leading to a categorization of human rights in accordance to their nature and purpose. The position of multinational companies and non-governmental organizations is also examined because of the lack of control under current consensus. Therefore, the modern approach recognizes the problem of horizontal endangerment of human rights and acknowledges individual responsibility for human rights violations.

Secondly, the effect that the digital age has had to our lives is also vital when talking about human rights. The emergence of the Internet in the late 20<sup>th</sup> century, for example, has opened new opportunities for those engaging in exploitation and abuse of woman and children. Nowadays, exploitation is more open than ever before as information and computing technology offers tools for practicing this kind of antisocial behavior in secrecy. The liability of the Internet service providers and issues related to cyber censorship and online privacy infringements shape the traditional legal environment. In addition to individual perspective, the governments have also realized the potential dangers and reacted by imposing different kind of restrictions to what can be placed on the Internet and by whom.

Thirdly, the purpose is to analyze international jurisdiction in cyberspace and to clarify problems and ambiguity related to personal jurisdiction and subject matter jurisdiction. The focus will be on theories and doctrines of how courts determine the choice of law conflict in cases where parties are from different states. The choice of law (i.e. jurisdiction to prescribe) can be based on several principles and norms of international law. Together with these principles the attention will be on the notion of the so-called forum shopping and on the question in which country or forum the case should be tried (i.e. jurisdiction to adjudicate). Along with the forum choice rules, the enforcement of judgments (i.e. jurisdiction to enforce) will be discussed because there is no sense to analyze human rights in cyberspace if there are no ways to impose liability for impediments.

Fourthly, a closer look at the computer-based 3D environment is necessary, in order to understand better the concept of virtual worlds and their relevance to human rights law. The requirements to establish a presence in virtual worlds, the different characteristics of virtual worlds and the role of “avatars” are carefully reviewed and evaluated. Also, a closer inspection to current legislation and to other more informal suggestions is necessary to better understand the novelty of virtual platforms. The purpose is to analyze and examine all the relevant factors of cyber law and virtual worlds that might jeopardize human rights in the future. Right to property, privacy violations, freedom of speech and discrimination are all among the potential problems waiting to actualize if virtual worlds reach their full potential. The lack of coherent legislation and landmark cases related to virtual property, for instance, are being used to highlight the importance of human rights protection in virtual worlds. In general, it is essential to understand that actions taken in a virtual environment can indeed have real life consequences.

Fifthly, the purpose is to propose some new ideas and solutions to problems arising from virtual property or virtually committed privacy offences for that matter. The possibility of virtual courts and virtual litigation in addition to virtual law enforcement will be discussed because, in order to prepare for future problems in human rights sector, it is absolutely vital to consider how individuals can maintain their rights and freedoms in an online environment. Finally, the emphasis will be on the recent trends and the latest progression that virtual worlds have had into our

reality. The first-ever US Congress hearing considering virtual worlds and the Virtual Law Conference held in New York 2008 will be discussed, in order to illustrate the momentum virtual worlds have at the moment.

Taking everything into account, the main goal is to analyze the notion of virtual worlds in the context of human rights law and to demonstrate that acts committed in cyberspace can extend to real life as well. In addition, the objective is to proclaim that the current level of human rights protection is not adequate enough as regards to violations committed in virtual worlds. This thesis is a study of potential dangers and a brief look into the future of a cyber generation because there is no coming back if virtual worlds reach their full potential. It is our duty to make sure that the situation in cyberspace does not get out of proportion.

## 2. Can Individuals Violate Human Rights?

In order to comprehend human rights in cyberspace, it is necessary to understand the origin of human rights law as it was construed in the age of the Enlightenment<sup>1</sup> in the late 17<sup>th</sup> century. In this era, human rights were used to challenge the notion of nation state as they were designed to draw the line between the powers of a sovereign and individuals. Emancipation from state's authority was based on theories such as social contract<sup>2</sup> and separation of powers<sup>3</sup> that were products of western philosophers like Hobbes, Locke, Montesquieu and Rousseau. However, as a result of World War II outrage, a call for a new kind of human rights protection was established. Postwar revelations led to the founding of international organizations namely United Nations and to adoption of several international treaty bodies, like the Universal Declaration of Human Rights (UDHR)<sup>4</sup>, the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>6</sup>, for example. These three documents are referred as the International Bill of Human Rights and they lay down the framework jurisprudence of international human rights law.

However, the difference between international human rights law and national human rights legislation is fundamental due to the range of application and subjects involved. Individuals can violate human rights according to national legislation but the issue becomes more complicated under international human rights law where the subject is almost always a state. Therefore, there remain some open questions related to the

---

<sup>1</sup> The age of Enlightenment refers to European intellectual movement in the late 17<sup>th</sup> century and 18<sup>th</sup> century that emphasized reason and individualism instead of tradition. It is associated with Western philosophers like Locke, Kant, Voltaire, Rousseau, Smith and Descartes.

<sup>2</sup> Social contract refers to the unwritten agreement between the members of a society to maintain social order. The origin of social contract is most commonly associated with philosophers like Hobbes, Locke and Rousseau in the 17<sup>th</sup> and 18<sup>th</sup> century.

<sup>3</sup> Separation of powers refers to division of political power in executive, legislative and judicial branch and the notion itself is attributed to Montesquieu in the 18<sup>th</sup> century.

<sup>4</sup> Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

<sup>5</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976

scope of international human rights law, the extent of protection on private sphere and individual responsibility in accordance to both national and international human rights law. The issue of individual responsibility is very interesting because actions taken in virtual worlds, for instance, may be difficult to control by states due to the borderless nature of the cyberspace.

## 2.1 State Versus Non-state Actors

**Civil and Political Human Rights** To define and clarify the scope of international human rights law scholars have divided rights into generations. The so-called first generation of human rights is classified as being negative by nature meaning that a state or government is obliged not to interfere in the practice of civil and political rights. For instance, states are required to apply due process of law and cherish individual rights such as right to freedom of speech, privacy or security. Therefore, civil and political rights are labeled as rights guaranteed by states and they can be pursued against public authorities abusing its powers. However, one might wonder who is to blame if violations to the right to life or to the right to individual autonomy occur in the private realm of life. This fault was also recognized in 1996 by a UN Special Rapporteur on violence against woman when she drew a parallel between international definition of torture and domestic violence: “It, therefore, suffices to state that domestic violence, defined as violence that occurs within the domestic sphere perpetrated by both private and state actors, constitutes a violation of the human rights of woman.”<sup>7</sup> As the freedom from abuse demonstrates, it seems that *de facto* violations to civil and political rights can be viewed in the light of the non-state actors also. As a matter of fact, according to Chinkin, the historical dichotomy hinders individual rights: “The significant documented violence against woman around the world remains unaddressed by the international notion of the right to life because that legal system is focused on ‘public’ actions by state.”<sup>8</sup>

---

<sup>7</sup> Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Feb. 6, 1996, UN Doc. E/CN.4/1996/53, available at: [http://www.sariq.org/focus\\_areas\\_vawc\\_un\\_special\\_rapporteur.asp](http://www.sariq.org/focus_areas_vawc_un_special_rapporteur.asp)

<sup>8</sup> Charlesworth, H & Chinkin, C, “The boundaries of international law – A feminist analysis” (2000), chapter 7, p 234



**Economic, Social and Cultural Human Rights** Economic, social and cultural rights on the other hand have been categorized necessities that governments are required to offer for their citizens. The second generation of human rights includes rights such as right to health, social security and housing and food, for instance. Implementation of these rights requires an active governmental intervention together with positive actions in order to ensure their protection. Since their realization is related to the good will of states it is uncertain what the standard of protection is and whether governments can be held liable for violations and to what extent<sup>9</sup>. However, the position and power of NGOs was noticed by Jean Ziegler in 2003 when he was the Special Rapporteur of the UN Commission on Human Rights on the right to food.” The growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State also mean that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power.”<sup>10</sup> Since then there have been some initiatives in the UN level in order to expand the scope of human rights protection to private sphere without reaching any legally binding consensus yet.

**Collective Human Rights** The third, and probably the most controversial types of human rights are the so-called human rights of the third generation or collective rights, such as right to development<sup>11</sup> or right to a healthy environment. They are designed to protect groups rather than individuals and many of these rights are products of soft law instruments such as declarations and resolutions of the UN General Assembly. As it is possible for states to endanger our collective human rights, it is at the same time very feasible to imagine non-state actors violating our right to a healthy environment, for instance. Multinational companies and transnational

---

<sup>9</sup> See Coomans F. and van Hoof, F, The Right to Complain about Economic, Social and Cultural Rights: Proceedings (of the Expert Meeting on the Adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Utrecht, 25-28 January 1995)

<sup>10</sup> Report of the Special Rapporteur of the Commission on Human Rights on the right to food, Aug. 26, 2003, in accordance with General Assembly resolution 57/226, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N03/484/16/PDF/N0348416.pdf?OpenElement>

<sup>11</sup> See Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986, available at: <http://www.unhcr.ch/html/menu3/b/74.htm>

corporations are among the major reasons for pollution and thus it would be natural if they would also be subjected under scrutiny according to international human rights protection. The question of horizontal effect is problematic due to the long tradition of state being the duty bearer under many international treaty bodies and *jus cogens* norms but nonetheless due to globalization and technological evolution there might be a demand for a re-evaluation in the near future.

## 2.2 Privatization of Human Rights

Privatization of human rights is a debated topic among scholars because if private bodies are found liable it will both blur the line between private and public branch and convey *tacitly* new duties for the private sector: “The first approach suggests that a dynamic, evolutive interpretation of the European Convention implies that it is applicable in the private sphere; the second suggests that denying such an application, for whatever reason, creates a ‘dangerous’ distinction between ‘public’ and ‘private’ which, apart from the practical difficulties, not only hinders progressive change but leaves many victims unprotected.”<sup>12</sup> It is questionable whether this was the original intention of enactments like the European Convention or the International Covenant on Civil and Political Rights for instance, but it is certain that under any circumstances it is not possible to entirely separate the private section from the public one.

The paradox of public and private actors has been under discussion in the United Nations Human Rights Committee. It has published so-called “General Comments”<sup>13</sup> relating to the articles of the ICCPR since 1981 and they have gained a special judicial status<sup>14</sup> as they promote universal protection of human rights. Firstly, the Committee makes a reference to private actions that threaten article 6 (right to life<sup>15</sup>) of the ICCPR. Secondly, the Committee views that private actors can violate article 7

---

<sup>12</sup> Clapham, A, “Human Rights in the Private Sphere” (1993), Introduction, p 7

<sup>13</sup> Available at: <http://www1.umn.edu/humanrts/gencomm/hrcomms.htm> (last visited on Mar. 18, 2008)

<sup>14</sup> *Ibid.*

<sup>15</sup> [Human Rights Committee, General Comment 6](#), Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 127 (2003).

(prohibition of torture, or cruel, inhuman or degrading treatment or punishment<sup>16</sup>) and thus: “It is also the duty of public authorities to ensure protection by law against such treatment even when committed by persons acting outside or without any official authority.”<sup>17</sup> Thirdly, article 10 (treatment of persons deprived of their liberty<sup>18</sup>) is interpreted by the Commission to suggest that: “Ultimate responsibility for the observance of this principle rests with the State as regards all institutions where persons are lawfully held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions.”<sup>19</sup> Accordingly, states cannot argue that international human rights protection has no relevance to the private sector because individuals indeed are capable of committing human rights violations. It is also mentionable that the United Nations Committee on the Elimination of Racial Discrimination has handled complaints from individuals in cases of unfair dismissal of employment contract. For example, in *Yilmaz-Dogan v. The Netherlands*<sup>20</sup> the Committee found that Netherlands had breached Ms Yilmaz-Dogan’s right to work under the Convention on the Elimination of All Forms of Racial Discrimination, and thus applied human rights law in the private sphere.

The line between private and public sector has become artificial and it is not practical nor beneficial to draw such an explicit distinction as more and more power continues to shift to NGOs and other multinational companies. There is no room for rigid boundaries if we are to protect human rights sufficiently in the global marketplace crowded with private bodies: “It is clear that the current trend in Europe for privatization, private enterprise, and self-regulation will mean that more and more services will be tendered out or privatized. A traditional reading of human rights law as only applicable to state officials would leave many ‘private’ actors outside the

---

<sup>16</sup> [Human Rights Committee, General Comment 7](#), Article 7 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 129 (2003).

<sup>17</sup> *Ibid.*

<sup>18</sup> [Human Rights Committee, General Comment 9](#), Article 10 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 131 (2003).

<sup>19</sup> *Ibid.*

<sup>20</sup> Report of the Committee on the Elimination of Racial Discrimination, (Thirty-sixth session, 1988), Communication No. 1/1984: Netherlands. 29/09/88. CERD/C/36/D/1/1984, available at:

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/b8fe54218efdd3cac125693b00371f0d?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/b8fe54218efdd3cac125693b00371f0d?Opendocument)

human rights dialogue.”<sup>21</sup> Consequently, it is an interesting question whether this implies that international human rights law simultaneously transmits new duties or obligations to private actors.

### **2.3 Individual Responsibility According to International Laws**

In order to understand the position of an individual in compliance with human rights violations, it is necessary to consider customary division of international law. International law can be divided into public international law and private international law as the former is concerned with rights and obligations between nation states and the latter deals with disputes between private persons. The emergence of human rights law shattered this traditional notion as the law extends to both individuals and states. Due to the notorious Nuremburg trials<sup>22</sup> in the mid 20<sup>th</sup> century individuals acting in their personal capacity were held liable for crimes under international law. However, the ambiguity related to legal personality<sup>23</sup> of individuals, universal jurisdiction and the contrast between the national and international human rights remained an open question for many years.

**Legal Personality of Individuals** Firstly, in order to hold individuals responsible for human rights violations it is necessary to examine whether private persons have a legal personality according to international norms. Acknowledgement of individual legal capacity has evolved from the very beginning of the UN system. For example, in 1967 the Economic and Social Council of the United Nation (ECOSOC) passed a

---

<sup>21</sup> Clapham, A, “Human Rights in the Private Sphere” (1993), *International Human Rights and Private Bodies: Two Approaches*, p 126

<sup>22</sup> The aftermath of the World War II lead to the adoption of UN Charter and Universal Declaration of Human Rights, for instance. In general, the Nuremburg trials were a unique historical event that had major effect in defining individual responsibility in a context of humanitarian law and human rights law. More information available at: <http://www.law.umkc.edu/faculty/projects/ftrials/nuremburg/nuremburgACCOUNT.html> (last visited on Mar. 20, 2008)

<sup>23</sup> In general, legal person has rights and obligations and is subject to legal obligations. In a context of international law this refers to the possibility to make international claims, for instance.

Resolution 1235 (XLII)<sup>24</sup> that gave the Human Rights Commission the power to perform reviews based on notices and to undertake comprehensive research of human rights violations. Article 25 of the European Convention of Human Rights also promotes individuals' legal personality by authorizing the Commission to investigate petitions from individuals claiming breach of the Convention of Human Rights. In *Lawless v. Ireland*<sup>25</sup> and in so-called *Vagrancy cases*<sup>26</sup> the European Court of Human Rights further enforced the view that individuals possess all the time more and more legal standing in the eyes of international law. The *Lawless* case was a landmark decision considering peoples' access to justice as it was the first case where individual complaints were taken into consideration against state in the European Court of Human Rights. Since then, the international dispute settlement mechanism has allowed more standing to individual needs in accordance to art 25 of the European Convention of Human Rights. As a subsequent result the Protocol No. 9<sup>27</sup> enabled individuals to bring their claims before the Court, however, the procedure was still subjected to state's ratifications. From that point on, the case-load finally became overwhelming and the following step was the adoption of the Protocol No. 11<sup>28</sup>, which completely changed the former part-time court and Commission to a distinct full-time Court. Nowadays, the European Court of Human Rights may receive individual applications in accordance to art 34 of the Convention: "The Court may

---

<sup>24</sup> Economic and Social Council Resolution 1235 (XLII), 42 U.N. ESCOR Supp. (No. 1) at 17, U.N. Doc. E/4393 (1967), More information available at:

<http://www.hrea.org/erc/Library/monitoring/HFHR/6-UN-CommHR.html>

<sup>25</sup> The Court of Human Rights enforced that individual views can be taken into consideration even though individuals lack actual authority to appear before the court. See *Lawless Case - Lawless v. Ireland* (No. 1) - 332/57 [1960] ECHR 1 (14 November 1960), available at:

<http://www.echr.coe.int/ECHR/EN/Header/CaseLaw/HUDOC/HUDOC+database/>

<sup>26</sup> The Court of Human Rights held that applicant's lawyer could under certain circumstances address the Court during the oral hearings. See "Vagrancy Cases" - *De Wilde, Ooms and Versyp v. Belgium, (No 1)* (1971) 1 EHRR 373 (June 1971), available at:

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>

<sup>27</sup> Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 6.XI.1990 This Protocol has been repealed as from the date of entry into force of Protocol No. 11 (ETS No. 155) on 1 November 1998

<sup>28</sup> Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, Strasbourg, 11.V.1994. Since its entry into force on 1 November 1998, this Protocol forms an integral part of the Convention (ETS No. 5)

receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”<sup>29</sup>Therefore, legal capacity of individuals under traditional international law has evolved by means of the case law of European Court of Human Rights and amendments of fundamental treaty bodies.

**Universal Jurisdiction** Secondly, the question of universal jurisdiction was tackled in a landmark decision in *Israel v. Eichmann*<sup>30</sup>, concerning crimes against humanity committed by a Gestapo officer in Nazi Germany. After the World War II Eichmann was abducted from Argentina by Israel government and prosecuted on the ground of universal jurisdiction. The fact that the District Court of Jerusalem relied on the principle of universal jurisdiction to continue the proceeding makes it interesting in accordance to the international law. Neither nationality nor territoriality principles applied to Eichmann as the crimes were not committed on Israel’s territory nor was he an Israeli national. However, the Israeli government found him guilty and sentenced him to death after the Supreme Court of Israel had dismissed all the complaints. As regards to human rights law, it is remarkable that one particular individual was haunted by an entire nation. Even though the Eichmann decision is open to severe criticism, it is one of the most illustrative examples of how individuals can be held liable for serious human rights violations.

**National Human Rights Protection as opposed to International Human Rights Protection** Thirdly, the difference between the national human rights protection and international human rights protection is important because, under national norms, individuals can violate human rights and thus be held liable for offenses. Human rights in cyberspace, on the other hand, are an interesting field of law due to their infinite nature and lack of control as regards to any single state or legislation. There

---

<sup>29</sup> Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Rome, 4.XI.1950, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

<sup>30</sup>Attorney-General of the Government of *Israel v. Eichmann* (Dist. Ct. Jerusalem) (1961), 36 Int’l L. Rep. 5.

are no universal rules for the Internet and thereby it is questionable who is responsible for violations to human rights occurring in an online environment. The question might seem theoretical to certain extent but in the near future the boundaries of human rights law will be tested as abuses to human freedom and dignity materialize in virtual worlds, for instance.

**Lack of General Rules for Individual Responsibility** It is difficult to define a general rule for individual responsibility because international laws rely on customary laws and principles of different legal systems: “A practical dilemma to the emergence of the general rule through the practice of domestic courts is that the lack of coherence and the complexity of existing rules is not conducive to effective implementation, yet effective implementation is unlikely to occur unless the rule is generalized and therefore rendered amendable to implementation by virtue of its simplicity, clarity and coherence.”<sup>31</sup>In other words, international human rights law lacks general norms and guidelines of individual responsibility. Nevertheless, as individuals can be found liable for jeopardizing human rights, it is equally important to define standard rules for this kind of proceedings. The nature, scope and content of human rights laws are in a constant state of flux and the impact of digital age has had a major outcome in this. It seems that the range of conventional protection is no longer adequate enough as human right issues have expanded to cyberspace.

---

<sup>31</sup> Sunga, S, “Individual Responsibility in International Law for Serious Human Rights Violations” (1992), Chapter VII: Emergence of a General Rule of Individual Responsibility for Serious Human Rights Violations, p. 166

### 3. The Perils of Human Rights Protection in the Digital Age

To comprehend the current trends and the possibility of new threats to human rights protection, it is essential to examine the application of human rights in the digital age. As a result of development, the ambit of human rights law has expanded rapidly due to the influence of digitalization in the late 20<sup>th</sup> century. Nowadays, the applications of the Internet along with the many novelties to peoples' interaction challenge the traditional notion of human rights law. The interaction between digital technology and human rights makes it extremely difficult to define human rights exhaustively in the context of cyberspace. Therefore, the dark side of cyberspace needs to be addressed because, for instance, cyber exploitation including virtual child pornography, liability<sup>32</sup> and censorship issues together with privacy and surveillance problems create a tension relevant to both individuals and to the future of human rights law in general.

#### 3.1 Cyber Exploitation and Virtual Pornography

**Cyber Exploitation of Woman** According to Donna M. Hughes: “The sexual exploitation of woman and children is a global human rights crisis that is being escalated by the use of new technologies”.<sup>33</sup> This can be interpreted to mean exploitation that is facilitated by the use of information and communication technologies (ICTs). The Internet, for example, offers an entirely new kind of advantage to both individuals and the whole sex industry to market, find and oppress woman. Hughes argues that digital media, such as newsgroups, websites and chat-rooms can all be used for exploitation purposes as they serve as the perfect platform for this kind of criminal activity. However, new technology also offers some advantages to the victims: “It may be safer, and perhaps more lucrative, for a woman to sell sex ‘virtually’ and remotely via a website, where she is in more control of the

---

<sup>32</sup> In the context of the Internet there is an interesting problem related to the liability of the Internet Service Provider (ISPs)

<sup>33</sup> Hughes, D, “The use of new communications and information technologies for sexual exploitation of woman and children” (2002) 13(1) *Hastings Woman’s LJ* 129, p 129, available at: [http://www.uri.edu/artsci/wms/hughes/new\\_tech.pdf](http://www.uri.edu/artsci/wms/hughes/new_tech.pdf) (last visited on Feb. 18, 2008)



transaction and not reliant on a pimp or other third party”.<sup>34</sup> It is uncertain how the issue of cyber exploitation should be addressed or who actually profits the most, but one thing is obvious; something needs to be done because the amount of ICTs keeps growing along with the new applications such as virtual worlds etc.

**Virtual Child Pornography** Another form of violation to human rights is child pornography that nowadays takes place both in real life and in cyberspace. Today the majority of consumption and production happens online as ICT has grown to be the most popular medium of distribution. Reasons for this are low costs if any, easiness and the ability to act anonymously. Since the mid-1990s, the whole child pornography industry has changed dramatically due to the development of digital interaction: “the Internet is publicly available, and as its popularity surged in the mid 1990's so many more ordinary members of the public became aware of child pornography for the first time...”<sup>35</sup> For instance, a completely new kind of subculture has emerged as pedophiles have begun to group up and share their fantasies online. One of the most repulsing incidents was the Orchid Club, exposed in California in May 1996: “The Orchid Club was discovered when the police arrested one of the members on a charge of child sexual abuse. Involving individuals from countries as far afield as Finland, Australia, the United Kingdom and Canada, the Orchid Club is widely considered the first prosecuted case in which pictures of a child being molested were transmitted in real time using video conferencing software.”<sup>36</sup> Another interesting issue is the so-called morphed images (i.e. pseudo-photographs<sup>37</sup>), created by the modern day software. They lack the real-life victim but amount to a certain degree of child pornography. However, in *Ashcroft v The Free Speech Coalition*<sup>38</sup> the US Supreme court ruled that digital child pornography prohibited under the Child Pornography

---

<sup>34</sup> Klang, M & Murray, A, “Human Rights in the Digital Age” (2005), chapter 2, p 15, Chatterjee, B, “Pixels, Pimps and Prostitutes: Human Rights and The Cyber-Sex Trade

<sup>35</sup> Childnet International, “The Contribution of Hotlines to Combating Child Pornography on the Internet”, available at: <http://www.childnet-int.org/downloads/combating-child-pornography.pdf> (last visited on Feb. 23, 2008)

<sup>36</sup> More information available at: [http://www.ecpat.net/eng/ecpat\\_inter/publication/Other/English/Html\\_page/ecpat\\_prot\\_child\\_online/files/internet8.htm](http://www.ecpat.net/eng/ecpat_inter/publication/Other/English/Html_page/ecpat_prot_child_online/files/internet8.htm) ((last visited on Feb. 23, 2008)

<sup>37</sup> In general the term refers to an image that appear to be a photograph made by using a computer or other technique

<sup>38</sup> *Ashcroft v The Free Speech Coalition*, No. 00—795. Argued October 30, 2001—Decided April 16, 2002, available at: <http://supct.law.cornell.edu/supct/html/00-795.ZS.html> (last visited on Feb. 23, 2008)

Prevention Act of 1996 (CPPA) was unconstitutional as being against the ideals of the First Amendment rights of US citizens (i.e. freedom of speech). Digital images that were combined to create child pornography were doomed to be nothing else but a creation of imagination, bytes and codes. Nevertheless, these are good examples of how human rights can be jeopardized in the digital age as the industry of virtual child pornography continues to grow.

### 3.2 Liability of the Internet Service Providers

Liability of the ISPs has been a debated topic in the context of free speech versus defamation, for instance. With the help of global medium like the Internet, for example, the message can be made available for a larger audience at greater speed but also with less scrutiny and quality control. The Internet can be used simultaneously to provide passive information and to agitate active discussion. Chat-rooms, electronic bulletin boards, personal blogs, e-mails and virtual worlds all impose dangers to individuals and their reputation. In order to pursue someone for defamation there have to be both publication or communication and injurious statement present. Sometimes, it may be difficult to trace the original writer<sup>39</sup> and the attention turns to the party actually distributing the message (i.e. ISPs)<sup>40</sup>. The problem is that the Internet Service Providers may not have the means to monitor the content published on their websites, or they lack the knowledge of the defamatory nature of the publication. For example, in *Cubby Inc v Compuserve Inc*<sup>41</sup> the US District Court of New York found that the ISP acting as a mere distributor could not be liable for the content posted to the bulletin board by its users. However, in *Stratton Oakmont Inc v Prodigy Services*<sup>42</sup> the New York Supreme Court held that Prodigy acted as a publisher with an editorial function and thus was found liable. The cases above highlight the ambiguity of the liability of the ISPs and *de facto* the only way to avoid potential defamation claims is to remove the obscene material completely. The current situation is neither beneficial

---

<sup>39</sup> However, so-called SLAPP (Strategic lawsuits against public participation) lawsuits are being used to veil the true identity of an author

<sup>40</sup> Identification, role in communication and possible assets are among the reasons why ISPs encounter a great deal of lawsuits nowadays

<sup>41</sup> Klang, M & Murray, A, "Human Rights in the Digital Age" (2005), chapter 5, p 65, Rowland, D, "Free Expression and Defamation"

<sup>42</sup> *Ibid.*

to the Internet Service Providers nor individuals, and has a chilling effect on free speech in general.

### 3.3 Cyber Censorship and Digital Surveillance

**Cyber Censorship** One of the most fundamental principles to human rights law is the freedom to receive and communicate information. In the context of the digital age, the doctrine of free marketplace of ideas<sup>43</sup>, however, is under pressure when technology is being used to filter<sup>44</sup> information akin to censorship. For example, since the adoption of the European Union's 1997 Action Plan on Promoting Safe Use of the Internet<sup>45</sup>, the EU has invested in many filtering projects such as NETprotect I and II projects<sup>46</sup>, ICRA safe project<sup>47</sup> and the PRINCIP program<sup>48</sup>. Another good example is the Safer Internet Programme<sup>49</sup> established in 1999 and later on extended to last till year 2008. The purpose of this program was to eliminate harmful, racist and illegal contents on the Internet by creating a standardized rating system. In US, on the other hand, the methods have been more aggressive in contrast to the soft approach adopted in the EU-level. In 1996, the Communications Decency Act (CDA) was adopted, which prohibited distribution of obscene or indecent material to minors concerning those who were acting in *mala fide*<sup>50</sup>. However, in a landmark decision of *ACLU v. Reno*<sup>51</sup>, the US Supreme Court partially overturned obscenity provisions of the CDA

---

<sup>43</sup> The doctrine of free marketplace of ideas promotes freedom of expression and is most famously associated with Justice Oliver Wendell Holmes Jr. See *Abrams v. United States*, 250 U.S. 616 (1919)

<sup>44</sup> Filtering technology in cyberspace vary from different kind of filtering software, rating systems and labeling to a complete blocking of obscure material

<sup>45</sup> More information available at: <http://europe.rights.apc.org/eu/saferuse.html> (last visited on Feb. 26, 2008)

<sup>46</sup> More information available at: <http://www.net-protect.org/en/default.htm> (last visited on Feb. 26, 2008)

<sup>47</sup> More information available at: [http://ec.europa.eu/information\\_society/activities/sip/projects/targeted/filtering/closed\\_project\\_s/icrasafe/index\\_en.htm](http://ec.europa.eu/information_society/activities/sip/projects/targeted/filtering/closed_project_s/icrasafe/index_en.htm) (last visited on Feb. 26, 2008)

<sup>48</sup> More information available at: [http://ec.europa.eu/information\\_society/activities/sip/projects/targeted/filtering/closed\\_project\\_s/princip/index\\_en.htm](http://ec.europa.eu/information_society/activities/sip/projects/targeted/filtering/closed_project_s/princip/index_en.htm) (last visited on Feb. 26, 2008)

<sup>49</sup> More information available at: <http://www.saferinternet.org/ww/en/pub/insafe/index.htm> (last visited on Feb. 27, 2008)

<sup>50</sup> Klang, M & Murray, A, "Human Rights in the Digital Age" (2005), chapter 8, p 104, Esler, B, "Filtering, Blocking and Rating: Chaperones or Censorship?"

<sup>51</sup> *Reno v. American Civil Liberties Union*, No. 96-511, Argued March 19, 1997—Decided June 26, 1997, available at:

on constitutional grounds. As a response, the Congress passed the Child Online Protection Act (COPA) in 1998, which was also tackled on First Amendment grounds as being too restrictive. A temporary solution, based on less restrictive filtering technology, was reached when the Children's Internet Protection Act (CIPA) was entered into force on December 21, 2000. It seems that governments embrace filtering technologies and legislative actions as they willingly monitor the content published in the Internet to safeguard *ordre public*. Even though the rationale may be to protect public, it is obvious that mandatory filtering and content rating will at the same time raise concerns related to freedom of speech and access to information. Rights believed to belong equally to everyone are also endangered by the fact that the Internet access and national content filtering schemes vary from country to country considerably.

**Digital Surveillance** Firewalls, proxy servers<sup>52</sup>, routers,<sup>53</sup> other technology and self-censorship are being used to block and filter certain kind of information as governments seek to observe the information on the Internet. The global surveillance methods may differ from mere controlling techniques (i.e. content analysis) to a total ban on access to a particular Web site, for example (i.e. blocking). In the eyes of the human rights law the blocking technique is a problematic issue because it may lead to information distortion and lack of transparency: "Overblocking is a significant challenge to access to information on the Internet, for it can put control over access in the hands of private corporations and unaccountable governmental institutions."<sup>54</sup>Sometimes controlling methods do not require sophisticated software or techniques but a rather comprehensive climate of dissuasion and a public pledge to engage in self-censorship. China is a perfect example of this kind of public pledge of self-regulation on both corporate and individual level: "The Public pledge commits signatories to abide state laws, promote ethical Internet use and competition, observe intellectual property rights laws, and protect consumer privacy...the Public pledge urges signatories to refrain from publishing information that may disrupt social

---

[http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0521\\_0844\\_ZS.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0521_0844_ZS.html) (last visited on Feb. 28, 2008)

<sup>52</sup> The function of the proxy servers is to deny access to a particular website

<sup>53</sup> Router is a computer or software package used to handle the connections between networks

<sup>54</sup> Klang, M & Murray, A, "Human Rights in the Digital Age" (2005), chapter 9, page 117, Rowland, J, D and Villeneuve, N, "Firewalls and Power: An Overview of Global State Censorship of the Internet"

stability or spread superstition”<sup>55</sup>The issue was tackled by human rights organizations when Yahoo! Inc, one the largest online search engines, was asked to answer for possible human rights violations to free speech by approving *status quo* in China<sup>56</sup>. Access to information is also regulated on national level according to political agendas and on local level such as in cyber cafes etc. The former is being used in Syria where access to majority of the Israeli websites is blocked and the latter in many developing countries where the vast majority of people do not own personal computers. As mentioned above, the Internet indeed is not a completely *laissez-faire* free market as the global surveillance challenges global politics, civil society and democratic values.

**Employee Surveillance** Informational and communications technology has also made it possible for employers to monitor their employees by overseeing their telephone calls, e-mails or Internet use, for example. Sometimes this kind of surveillance may occur without the employee’s knowledge and hence human rights such as right to privacy or right to private life are undermined. This issue was raised in *Halford v United Kingdom*<sup>57</sup> where the claimant had been tapped as a result of a complaint of alleged sexual discrimination at workplace. The case went all the way to the European Court of Human Rights as the court ruled that there were unusual and special circumstances present to support the claimants reasonable expectations of privacy. Although, in this particular case there was a breach of art 8 ECHR present, the issue of an employee’s right to privacy remains a rather undeveloped area of law.

It seems that the human rights law will encounter numerous challenges as the digital age continues to expand even deeper into our lives. Cyber exploitation, allocation of liability of the ISPs and problems related to “moral panics” over the content of the Internet are only a few issues that must be taken into consideration when talking about the future of the human rights law in the digital environment. Another interesting issue is jurisdiction in cyberspace, as it deals with governments’ authority and courts’ power to enforce judgments between parties from different countries.

---

<sup>55</sup> *Ibid*

<sup>56</sup> More information available at: <http://hrw.org/press/2002/08/yahoo-ltr073002.htm> and [www.rsf.org/article.php3?id\\_article=2959](http://www.rsf.org/article.php3?id_article=2959) (last visited on Mar, 4. 2008)

<sup>57</sup> More information available at: <http://www.hrcr.org/safrica/privacy/Halford.html> (last visited on Mar, 7. 2008)

Before going any deeper into virtual worlds and their relevance to human rights violations it is essential to consider main international doctrines related to jurisdiction in cyberspace.

#### **4. International Jurisdiction in Cyberspace**

There is no point in considering the possibility of human rights violations in cyberspace if there is no authority to enforce rules or laws against offences. In general, jurisdiction refers to the authority and power of a court or other legal body to hear and solve a particular dispute. At first, it is essential to examine the types of jurisdiction common to any kind of lawsuit. Secondly, due to the decentralized nature of the Internet and cyberspace, it is important to consider the theories of how cyberspace is regulated and by whom. This refers to so-called jurisdiction to prescribe<sup>58</sup>, which basically means state's authority to apply its laws to a particular situation. Thirdly, a clarification is needed for the standard of rules under which states can try cases and enforce judgments in their municipal courts. State's power to subject persons under the due process of its courts and other tribunals is called jurisdiction to adjudicate<sup>59</sup>. Jurisdiction to enforce<sup>60</sup> stands for a state's power to compel court judgments by means of police or other administrative officials. These issues are relevant to human rights laws because individual protection goes in vain if courts lack jurisdiction to decide cases and to enforce judgments.

**Personal Jurisdiction** Firstly, jurisdiction can be divided into personal jurisdiction (*in personam*) and subject matter jurisdiction (*in subjectam*) and both of them have to be present for a court to be able to hear the case. When determining a personal jurisdiction, a court must consider whether it has competence over particular defendant. If parties are from different states, as in many cases related to cyberspace, the problem arises as to what is the correct forum to try the case. These issues are harmonized under the private international law as it deals with conflict of law norms but a person can be subjected to personal jurisdiction according to several theories. Such theories include: a) being physically present in the forum trying the case; b)

---

<sup>58</sup> See Restatement (Third) of the Foreign Relations Law of the U.S. § 401 cmt. a (1987)

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

being a resident (i.e. domiciled) in the forum state; c) by consenting<sup>61</sup> to personal jurisdiction; and, d) according to minimum contacts<sup>62</sup> doctrine. The adoption of personal jurisdiction doctrine to online environment is more complex and it can be categorized according to the nature of online activity: “A passive Web site that merely transmits information and does not solicit business will generally not incur personal jurisdiction in a foreign state or country.”<sup>63</sup> Analogically, those interactive online activities that actively solicit business can be subjected to personal jurisdiction abroad. For instance, in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc*<sup>64</sup> the personal jurisdiction in the Internet was based on the level on interactivity and commercial nature of exchange of information. In other words, the Pennsylvania federal court found that there was personal jurisdiction present for a non-resident website because the defendant had knowingly conducted business with a resident of a forum state.

**Subject Matter Jurisdiction** After establishing personal jurisdiction it is necessary to demonstrate subject matter jurisdiction. It is one the most essential elements in any given lawsuit regardless of the nature and content of the case. It determines whether the court has power over some particular issue because failure to demonstrate subject matter jurisdiction can lead to nullification. For example, claiming a case in a wrong court will dismiss the case due to a lack of subject matter jurisdiction. It is also important to bear in mind that it is not possible for one party or court to waive a subject matter jurisdiction unlike in cases of personal jurisdiction. Therefore, subject matter jurisdiction is not an alternative to personal jurisdiction but rather an additional requirement of any kind of lawsuit.

**Principles to Determine Choice of Law** Secondly, there are many doctrines for jurisdiction such as the territoriality principle, the nationality principle, the effect

---

<sup>61</sup> A defendant can consent to personal jurisdiction either by answering the lawsuit or by voluntarily appearing to the court

<sup>62</sup> According to minimum contacts doctrine a court has a personal jurisdiction to defendant who’s business transactions and connections made it reasonable to anticipate a lawsuit. See *International Shoe Company v. Washington State*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)

<sup>63</sup> Gerald R. Ferrera et al., “Your Rights in Cyberspace” (2001), Chapter 2, p 24, Jurisdiction

<sup>64</sup> *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), available at: <http://cyber.law.harvard.edu/metaschool/fisher/domain/dncases/zippo.htm> (last visited on Apr. 9, 2008)

principle and the universality principle. In short, territoriality principle gives a state authority to exercise jurisdiction within its territory but nowadays its application to cyberspace has been under criticism: “A “cyber space” complicates the matter even further. As shown in the recent iCrave TV case<sup>5</sup>, enforcement based on territoriality principle may not be efficient nor fair anymore, whether it is in physical space or cyber space.”<sup>65</sup>The nationality principle, on the other hand, gives a state authority to regulate the conduct of individuals based on nationality or citizenship. Sometimes jurisdiction can be invoked because some act has effect to the territory of another state. This means that the consequences may occur in a different state than where the original act has taken place. For example, in *Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.*<sup>66</sup> the US court found that it had jurisdiction to prohibit US citizen’s access to Italian websites due to its supposedly dangerous nature. Nevertheless, it is a good example of how different jurisdictions collide in cyberspace. The universality principle is probably the most controversial principle, because to establish jurisdiction there is no need for a direct connection as regards to the location of the offence, nationality of the parties or the impact of the offence. Traditionally, the notion of universal jurisdiction was used to address the most severe violations to human rights such as genocide, crimes against humanity and torture.<sup>67</sup>Universality principle derives from the customary international laws such as *jus cogens* norms and international consensus to condemn certain acts so horrid as to be of universal concern. It is questionable whether it has any bearing on cyberspace but inciting terrorism by using the Internet, for example, may have consequences relevant to both human rights law and the international community as whole.

**Jurisdiction to Adjudicate and Jurisdiction to Enforce** Thirdly, while choice of law is defined according to the jurisdiction to prescribe doctrines, the forum choice is determined according to jurisdiction to adjudicate principle. The lack of clear guidelines and the character of cyberspace originate problems such as forum shopping

---

<sup>65</sup> Nari, L. “Challenges to Transnational Enforcement of Intellectual Property” (*IPRinfo Magazine* 2/2000), available at: [http://www.iprinfo.com/page.php?page\\_id=53&action=articleDetails&a\\_id=18&id=2](http://www.iprinfo.com/page.php?page_id=53&action=articleDetails&a_id=18&id=2) (last visited Apr. 9, 2008)

<sup>66</sup> *Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.*, 939 F. Supp. 1032 (S.D.N.Y. 1996)

<sup>67</sup> See supra note 30



and problems to access to justice if persons engaging online business, for example, can be subjected to a territory based jurisdiction. However, some direction can be found in American Bar Association's Panel Report; "Achieving Legal and Business Order in Cyberspace: A Report on Global Jurisdiction Issues Created by the Internet"<sup>68</sup> and US case law considering jurisdiction in cyberspace. The question of jurisdiction to enforce, on the other hand, is related to state's authority to penalize non-compliance with its laws and regulations. According to international laws it is not possible for a state to enforce its laws to persons living abroad unless there is some sort of bilateral agreement or arbitration clause related to extradition.<sup>69</sup> However, it is debatable whether the current consensus is adequate enough in the age of electronic commerce and in the context of the digital age.

**The Jungle of Jurisdiction** Jurisdictional issues on cyberspace cut across the borders of nation states as people operate businesses and other activities in an online environment. The danger is that the expansion of jurisdiction beyond state's territory leads to injustice as individuals cannot afford to litigate abroad. Therefore, it is universally important to consider what are the doctrines and principles under which non-residents can be tried all over the world. To blur the line even further, the next chapter goes into the virtual worlds of the Internet as the lawsuits related to virtual property, for instance, have tested the range of jurisdiction and human rights protection. To get through the change it is absolutely vital to update the current legislation since the application and popularity of virtual worlds will have an effect on human rights as well.

---

<sup>68</sup> Report of the American Bar Association ("ABA"), Achieving Legal and Business Order in Cyberspace: a Report on Global Jurisdiction Issues Created by the Internet, 55 Bus. Law. 1801, 1808 (August 2000), More information available at: <http://www.lex-electronica.org/articles/v7-1/Salis.htm> (last visited on Apr. 11, 2008)

<sup>69</sup> See supra note 30

## 5. Virtual Worlds: a Completely New Platform of Ideas

To understand the correlation between human rights and virtual worlds it is absolute paramount to talk about virtual worlds in general. Virtual worlds are a completely new environment where people interact through avatars<sup>70</sup> or other form of alter egos to bond with each other. There are numerous virtual worlds with different characteristics differing from massively multiplayer online role playing-games (MMORPG's<sup>71</sup>) to more flexible virtual environments (i.e. virtual platforms) where people go to meet and socialize. As compared to games, virtual platforms are more open to one's imagination and are similar to social networks because there are neither clearly defined goals nor guidelines of conduct set beforehand. They are also more business-oriented as both individuals and companies have exploited virtual worlds to gain financial benefits. Second Life<sup>72</sup> (SL) is one of the most prominent virtual platforms online today together with the likes of Habbo Hotel,<sup>73</sup> There.com<sup>74</sup> and Google Earth<sup>75</sup>, for example. From here after, the main discussion will be on SL because it has encountered a number of illustrative lawsuits and gained a lot of publicity due to its unique nature.

**Second Life** What is Second Life? Why do we need Second Life? Get a life! This is the most common response to someone who brings up this new phenomenon operating in a 3D virtual world. SL is a brainchild of Philip Rosedale, the founder and soon-to-be-ex CEO of Linden Lab, Inc and it was released to public in 2003. It is a new medium of interaction and in order to get a "second life" it is necessary to have a computer, Internet connection and a hint of imagination. In SL people communicate with each other through their avatars (i.e. residents) that vary from different sizes to

---

<sup>70</sup> Many virtual worlds like the Second Life require you to create an avatar, which represents you in the virtual world. Avatars are being used to interact, explore or build virtual objects in virtual worlds.

<sup>71</sup> On the most famous MMORPG is the World Of Warcraft, which has accordingly over 10 million users nowadays. More information available:

<http://www.tgdaily.com/content/view/35730/98/> (last visited Mar. 25, 2008)

<sup>72</sup> See <http://secondlife.com/> (last visited Mar. 25, 2008)

<sup>73</sup> Habbo Hotel is a social community aimed for teenagers. More information available at: <http://www.habbo.com/> (last visited Mar. 25, 2008)

<sup>74</sup> There.com is a virtual world very similar to SL as it has its own currency etc. More information available at: <http://www.there.com/> (last visited Mar. 25, 2008)

<sup>75</sup> Google Earth is a virtual globe using satellite images. More information available at: <http://earth.google.com/> (last visited Mar. 25, 2008)

different species. SL differs from traditional computer games because the content is both owned and created by the residents. In other words, Linden Lab recognizes full intellectual property rights<sup>76</sup> for its residents and everything from virtual malls to virtual revolts is carried out through people's alter egos. Linden Lab makes ends meet by selling virtual land to its residents who, in order to do business, need to change US dollars to local virtual currency called Linden dollars. In general, virtual worlds are: a) computer-based 3D environments; b) populated by movable avatars representing a person in cyberspace; c) an interactive forum of communication; d) a surface where it is possible to practice a free-market economy; and, e) a zone of imagination that allows user-created content.

**What Can You Do in Second Life?** For instance, in SL it is possible to do business with each other in Linden dollars as people equip their alter egos with different kinds of brands, images or virtual goods. Some residents are even quitting their daytime jobs in real-life as they make their living in SL acting as virtual fashion designers or virtual artists, for example.<sup>77</sup> In other words, virtual belongings have value and they can be traded for plain cash online, like any other intangible goods, such as software or music. The value of virtual property and the potential venue for marketing has also attracted many multinational companies like the Coca-Cola Company, IBM, Reuters Group PLC, Samsung and many others to establish themselves in SL. Some countries like Estonia and Sweden have established virtual embassies in SL and the Harvard Law School has even launched a virtual course in which students communicate and pursue their arguments with the help of their avatars.<sup>78</sup> Every day people come up with new ideas of how to imitate real life but as the possibilities are endless so are the amount of potential problems if people continue to shift from real-life to cyberspace. For example, the question is no longer whether avatars can “get married” but whether this could have some sort of consequences related to mutual virtual property or other joint possession of goods.

---

<sup>76</sup> This kind of digital property enjoys the same kind of protection as any intellectual property in real-life and these rights are enforceable in a court of law. See [http://secondlife.com/whatis/ip\\_rights.php](http://secondlife.com/whatis/ip_rights.php) (last visited Mar. 27, 2008)

<sup>77</sup> More information available at: <http://www.wired.com/gaming/virtualworlds/news/2006/02/70153> (last visited on Mar. 27, 2008)

<sup>78</sup> More information available at <http://cyber.law.harvard.edu/cyberone/videos/CyberOne.mp4> (last visited on Mar. 27, 2008)

**The Effect of Virtual Worlds to Real Life** Even though there are no laws, political parties or states regulating our presence in cyberspace, our actions in virtual environment can lead to real-life consequences. Human rights protect our values, beliefs and personality in real-life but the issue becomes more complicated when something happening online has concrete damages to our very persona in the real world. It is only natural that legal consequences will follow always when a large amount of money is involved. At the moment, virtual worlds offer a perfect stage for potential human rights violations due to their inadequate legislative control and surveillance. However, there are some sources of law from which it is possible to look guidance when encountering problems in virtual worlds. The law of the Internet will also touch some of the issues occurred in virtual worlds.

### **5.1 Implementation of legislation to Virtual Worlds**

Legal issues related to virtual worlds may be new to the legislators or scholars but in all likelihood many challenges will arise in this context hereafter. At this point, it is very difficult to explicitly define what laws apply to virtual worlds but ,in general, the branch of the law of the Internet (i.e. the Cyber law) is the most appropriate one. It is both very interesting and terrifying to see how the laws will develop because there is no long legal tradition to lean on as compared to some other branches of law. As a matter of fact, the area of cyber law is in a state of flux as the legal principles are being developed largely by case law and individual court decisions. However, there are some regulations and guidelines to the Internet law that simultaneously affect the future of virtual worlds.

**Cybercrime Convnetion** For instance, the Council of Europe’s Convention on Cybercrime<sup>79</sup> was opened for signatory in November 2001. Till today, there are more than 20 nations in which the Convention on Cybercrime has entered into force including countries like Finland, Estonia and US, for instance. The purpose was: “...to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate

---

<sup>79</sup> Council of Europe’s Convention on Cybercrime CETS No.: 185, Nov. 23, 2001, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>

legislation and fostering international co-operation....”<sup>80</sup>The convention is concerned with crimes committed via the Internet and other computer networks and it is an attempt to deal especially issues like copyrights infringements, computer related offences, child pornography and network security. The Convention is mainly a tool for harmonization and co-operation between nations but it also contains investigative powers related to search and seizure of computer data and real time collection of computer data.

**Electronic Commerce Directive** Another very interesting milestone, affecting both cyber law and virtual worlds, was reached when EU adopted the Electronic Commerce Directive in 2000. The purpose was to establish harmonized rules on: “...the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.”<sup>81</sup>It covers online information services (such as the Web TV’s or online newspapers), selling of goods and services online (such as Ebay or virtual commodities) and online advertising among other things. In other words, it systematizes rules related to buying or selling goods by means of the Internet or other electronic networks and, thus, it also has influence to virtual worlds because virtual property has become a lucrative business.

**WIPO Treaties** In addition to these treaties the UN’s agencies, such as the World Intellectual Property Organization (WIPO)<sup>82</sup> have had an impact through the application of intellectual property treaties to cyberspace. For example, the WIPO Copyright Treaty article 8 states that: “Authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works by wire or wireless means.”<sup>83</sup>Another good example is the WIPO Performances and Phonograms Treaty that gives performers and producers: “the exclusive right of authorizing the direct or indirect reproduction of their phonograms,

---

<sup>80</sup> *Ibid.*

<sup>81</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:NOT>

<sup>82</sup> Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967 and as amended on September 28, 1979)

<sup>83</sup> WIPO Copyright Treaty, adopted in Geneva on December 20, 1996

in any manner or form.”<sup>84</sup> According to these two WIPO treaties, the intellectual property protection can extend also to cyberspace, which analogically can have significance to both human rights law and virtual worlds.

**Private Views to Cyberspace** Together with the legislative acts mentioned above, there have been some unofficial suggestions to how the cyberspace should evolve. For instance, a Declaration of the Independence of Cyberspace was drafted by John Perry Barlow in 1996 to criticize governments involvement on the content of the Internet: “We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity. Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here.”<sup>85</sup> Barlow’s cyber-libertarian view is taken to extreme but, nonetheless, it is an alternative motion for a new legal order in cyberspace. Another interesting suggestion came in 2006 from Mario Gerosa, an Italian journalist and SL resident, who claimed that virtual architecture must be preserved as cultural heritage: “In these new worlds one can find many new forms of architecture. Some are based on designs that recall the architectural forms of real life, there are also worlds of a wholly original style. For this reason, they are original and evolutionary expressions of art and must be preserved.”<sup>86</sup> Some might say that it is absolute lunacy to suggest something as absurd as Gerosa did but there is no denying that at some level these issues are worth considering as they could be used to create much needed attention.

**Lack of Coherence in Legislation** Due to the fast paced technology and development, the status of legislation concerning cyber law and especially virtual worlds is quite incomplete. Some official acts of legislation have been adopted on international plane but the overall ambiguity does not profit transparency or predictability. It is only a matter of time before new problems will actualize and thus legislators and other officials need to address these issues as soon as possible. This

---

<sup>84</sup> WIPO Performances and Phonographs Treaty, adopted in Geneva on December 20, 1996, art 11

<sup>85</sup> Barlow, JP, “A Declaration of Independence for Cyberspace” (1996), available at: <http://homes.eff.org/~barlow/Declaration-Final.html> (last visited on Mar. 29, 2008)

<sup>86</sup> Gerosa, M and Shahrani, S, “Convention for the Protection of Virtual Architectural Heritage” (2006), available at: <http://gamm.org/index.php/2006/10/22/convention-for-the-protection-of-virtual-architectural-heritage> (last visited on Mar. 29, 2008)

sort of uncertainty also endangers human rights because nowadays violations occur in an online environment; in a place where there are no clear laws or regulations present. Therefore, it is important to consider the importance of human rights protection in virtual worlds.

## **5.2 The Importance of Human Rights Protection in Virtual Worlds**

Human rights in virtual worlds is not a paradox or a logically unacceptable perception that lacks any basis from real life experience. To explain the importance of human rights protection in virtual environment it is necessary to individually consider certain human rights that have already had some significance in the context of virtual worlds. Ideally, human rights were designed to protect our liberty and identity against possible infringements regardless of the offender or the form of violation. The fact that national legislators or international community have not yet reached a consensus, as regard to virtual worlds or to cyberspace, should not impede our rights and freedoms in an online environment. Human rights protection has a great importance in both real-life setting and when acting online. Violations to intellectual property rights, interference to personal privacy, correlation between freedom of speech and *ordre public* and discrimination together with limited changes to take legal actions are all taking place on a different scale than ever before. Nowadays, human rights are being violated in virtual worlds and the case law related to SL and other virtual worlds, for instance, provides us both interesting precedence and an important tool for demonstration and education.

### **5.2.1 Right to Property**

It has been over 50 years since the Universal Declaration of Human Rights (UDHR) was adopted and from that day on, at the latest, the right to property was recognized as a fundamental right. Nowadays, also many national constitutions<sup>87</sup> cherish both property rights and intellectual property rights as being fundamentally important. The most famous examples are the US Bill of Rights and its Fifth and Fourteenth Amendments stating that property cannot be deprived without due process of law.

---

<sup>87</sup> See Constitution of Finland, adopted on: 11 June 1999, in force since: 1 March 2000, Chapter 2 Basic rights and liberties, Section 15 Protection of property

There has been some ambiguity about whether intellectual property system falls within the ambit of human rights protection because of its complex nature. However, the current situation acknowledges the status of human right protection for both tangible property and so-called property of the mind<sup>88</sup>. In the context of virtual environments this is very important because, as mentioned before, everything from in-world real estates to virtual know-how is produced and owned by its creator. This is what makes SL so unique and captivating target as regards to the rule of law, and the issue has already been raised in the US by one of its residents.

**Virtual Property** On October 3, 2006 the US District Court of Pennsylvania had to consider a rather peculiar lawsuit when a lawyer, Marc Bragg (the plaintiff), sued Linden Lab, Inc. (the defendant) for confiscating his virtual property unlawfully and finally completely denying his access to SL. The plaintiff demanded \$8000 for damages and restitution of the land due to a breach of a virtual land auction contract performed in SL. The defendant, on the other hand, argued that Bragg had purchased land by fraudulent means at prices below market rates and, thus gained an unfair advantage. The defendants denied Bragg's access to his account (i.e. land) and froze his virtual belongings together with his virtual capital. Even though the case itself was mainly about the terms of service<sup>89</sup> between the parties and personal jurisdiction, it is a perfect example of how problems related to traditional property law can swift to virtual reality. This was also acknowledged by the Federal District Judge Eduardo C. Robreno: "Ultimately at issue in this case are the novel questions of what rights and obligations grow out of the relationship between the owner and creator of a virtual world and its resident-customers. While the property and the world where it is found are "virtual," the dispute is real."<sup>90</sup> The case, however, was later on settled but it was obvious that in near future similar cases would arise as it did a year later as regards to a virtual world called Habbo Hotel. This time, in Netherlands a 17 years old

---

<sup>88</sup> See Intellectual Property and Human Rights Panel Discussion to commemorate the 50th Anniversary of the Universal Declaration of Human Rights (Geneva, November 9, 1998), more information available at: <http://www.wipo.int/tk/en/hr/paneldiscussion/index.html> (last visited on Dec. 6, 2007)

<sup>89</sup> An agreement that describes the terms according to which Linden Lab, Inc offers its services

<sup>90</sup> *Marc Bragg v. Linden Research, Inc. and Philip Rosedale*, Civil Action NO. 06-4925 May 30, 2007, page 1, available at [http://pub.bna.com/eclr/064925\\_053007.pdf](http://pub.bna.com/eclr/064925_053007.pdf) (last visited Dec. 6, 2007)



youngster was accused of stealing virtual furniture from other users: “An Amsterdam police spokeswoman confirmed a report that the teen-ager was accused of stealing 4,000 euros (\$5,864) worth of virtual furniture by hacking into the accounts of other users.”<sup>91</sup> These cases demonstrate that virtual thefts are taking place and to be properly prepared for future law suits this issue needs to be addressed in accordance to cyber law and property law doctrines. The uncertainty related to virtual property jeopardizes human rights and it should also be a priority for the international community to recognize this issue and to take legislative actions.

**Copyright Infringements in Virtual Worlds** In addition to these cases there have been legal disputes related to pure copyright infringements occurring in SL. A need to protect the creative mind behind the innovations has rooted into to the realm of human rights law: “The States Parties to the present Covenant recognize the right of everyone...To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”<sup>92</sup> As the content created in SL enjoys intellectual property protection there is no need to question whether violations to copyrights, for example, simultaneously grasp also the heart of human rights law. This question was brought up in the US by a 46-years old entrepreneur equipping people’s alter egos with genitals and animated sex acts. In other words, a copyright infringement had occurred between avatars in SL that finally led to a real life lawsuit. “ ‘It’s a piece of software and software is copyrightable’ ” Taney said. “ ‘It’s also expressed in graphics, which also are copyrightable. There is some sizzle. People like to say it’s really far out there, but at the end of the day I equate it to basic intellectual property principles.’ ”<sup>93</sup> The case above is an extreme example of how intellectual property rights can be endangered but most commonly these cases involve unauthorized duplication of the creators

---

<sup>91</sup> Thomasson. E. “Police arrest teenage online furniture theft.” Reuters Nov. 14 2007, available at: <http://www.reuters.com/article/oddlyEnoughNews/idUSN149845120071114> (last visited Apr. 6, 2008)

<sup>92</sup> See supra note 6 - art. 15 (1) c

<sup>93</sup> “Second Life Sex Software Prompts Real-World Lawsuit” FOXNew.com, Aug. 10 2007, available at <http://www.foxnews.com/story/0,2933,292907,00.html> (last visited on Dec. 7, 2007)

products.<sup>94</sup> The sex case may be bending in US courts but it is very likely that similar kind of cases will arise in the future and will both challenge the legal boundaries and outline the importance of human rights in a virtual context.

**A Need for Legislation Update** As technology continues to evolve into a new dimension, the need for up-to-date legislation in the field of human rights protection is also necessary. Right to property means rights of an individual to dispose one's property freely regardless of the nature or content of the property. Different kind of property laws and restrictions apply to different types of property but as a general rule, restraints to property rights constitute a human rights violation. Therefore, human rights are in jeopardy also in virtual worlds such as SL if the service provider is allowed unilaterally to seize virtual property. The lack of legislation concerning virtual property and its unique nature does not mean that until the issue has been properly addressed, the strongest will dictate the rules. It is fair to say that human rights can be violated and to redress this kind of injustice, legislation must catch up the development. In addition to right to property it is important to consider right to privacy in the context of virtual worlds, as it has been regulated by many international treaty bodies for ages by now.

### 5.2.2 Right to Privacy

It has been stated that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."<sup>95</sup> On a national level, right to privacy is protected also by national constitutions such as France's Declaration of the Rights of the Man and of the Citizen, for instance. Therefore, right to privacy has been a fundamental human right for a long time now and due to this, it has been recognized by numerous treaty bodies and national legislation. Even though the content of privacy remains undefined, privacy issues relate to both public and private sphere of life. Right to privacy means personal identity, integrity and sexual autonomy among other things.

---

<sup>94</sup> *Eros, LLC et al v. Thomas Simon*, available at [http://virtuallyblind.com/files/07\\_10\\_24\\_eros\\_et\\_al\\_v\\_simon\\_complaint.pdf](http://virtuallyblind.com/files/07_10_24_eros_et_al_v_simon_complaint.pdf) (last visited on Dec. 27, 2007)

<sup>95</sup> See supra note 5 - art. 17(1)

However, violations to privacy occur whenever people form a community regardless of the environment. Thus, human rights are in jeopardy also in virtual worlds like SL when people place their personal information online. An interesting question is also whether the avatars in SL, for instance, possess rights to privacy, and if so, can their rights be violated virtually.

**Privacy Issues at Second Life** In SL people bare masks and meet in secrecy but sometimes they unveil their true identities at the same time subjecting themselves at risk. In this respect, SL is no different from any chats, discussion boards or blogs operating in the Internet. In theory, all the residents in SL have their right to privacy protected by the Linden Lab's Privacy Policy<sup>96</sup> and its Community Standards<sup>97</sup>. When signing in to SL and creating one's alter ego, some data is collected according to the Linden Lab Privacy Policy. In short, it states the data that is collected, how it is collected and for what use it is needed. It is obvious that whenever personal information is collected by private entities, a well-defined Internet privacy policy is required. The Community Standards, on the other hand, define the guidelines under which one should behave in SL. It sets out the "Big Six" rules that cannot be violated without getting suspended or expulsion. They apply to all areas of SL and they prohibit intolerance, harassment, assault, disclosure, indecency and disturbing the peace. This kind of antisocial behaviour is taking place in SL and, even though residents may report abuses to Linden Lab, it has got a real-life dimension already. One of the most shocking cases was when a Belgian resident was investigated for a "virtual rape" on demand of a Brussels public prosecutor in 2007. "Many would argue that sexually-oriented harassment that takes place in a virtual world is not 'virtual rape.' In other words, if someone causes his avatar 'Bad Max' to regularly say sexually explicit things to his avatar's neighbor 'Jane Nicegirl' he's definitely a contemptible sleazeball, he's almost certainly in violation of the Terms of Service of his virtual world, he's probably guilty of several harassment and stalking crimes, and he might be liable in civil court for intentional infliction of emotional distress. But, some would argue, no matter what the user has 'Bad Max' say to 'Jane Nicegirl,' it

---

<sup>96</sup> Available at <http://secondlife.com/corporate/privacy.php> (last visited Dec. 27, 2007)

<sup>97</sup> Available at <http://secondlife.com/corporate/cs.php> (last visited Dec. 27, 2007)

doesn't really make sense to call that 'rape.'"<sup>98</sup> It seems that "virtual rape" is a paradox but the case above certainly demonstrates the multitude these virtual worlds are having in today's borderless world.

**Do Avatars Enjoy Human Rights Protection?** Rights of avatars, on the other hand, is a rather abstract concept but, nonetheless, there have been some unofficial deliberations such as the Declaration of the Rights of Avatars in 2000: "The aim of virtual communities is the common good of its citizenry, from which arise the rights of avatars. Foremost among these rights is the right to be treated as people and not as disembodied, meaningless, soulless puppets. Inherent in this right are therefore the natural and inalienable rights of man. These rights are liberty, property, security, and resistance to oppression."<sup>99</sup> There has not been anything official that would recognize that avatars also may possess rights or freedoms but still the draft itself and the debate<sup>100</sup> that resulted from it may have some relevance in near future.

**Virtual Worlds Offer a perfect Opportunity to Violate Privacy** To summarize the concept of privacy in virtual environment one has to bear in mind that privacy of an individual behind the avatar can be violated and has been violated by many means. It is obvious that private persons may be subjected to privacy infringements always when people use the Internet but the issue of virtual harassment or assault is more complex. Whether there will be law suits in future related to "virtual rapes" or avatars' privacy, remains to be seen, but it is needless to say that once again development has paced out the legislation. At least, no one has been blamed for a "virtual murder", yet. Nonetheless, some kind of common principles or proper rules of law would be vital because it is not in anyone's best interest or in conformity with human rights protection if these issues are no settled.

---

<sup>98</sup> Duranske, B. "Reader Roundtable: "Virtual Rape" Claim Brings Belgian Police to Second Life", Apr. 24, 2007, available at <http://virtuallyblind.com/2007/04/24/open-roundtable-allegations-of-virtual-rape-bring-belgian-police-to-second-life/> (last visited on Dec. 27, 2007)

<sup>99</sup> Koster, R. "The Declaration of the Rights of Avatars", Aug. 27, 2000, art 2, available at: <http://www.raphkoster.com/gaming/playerrights.shtml> (last visited on Apr. 24, 2007)

<sup>100</sup> *Ibid.*

### 5.2.3 Freedom of Speech

In order to deepen the knowledge of human rights in the context of virtual worlds, it is necessary to focus on freedom of speech. It is the very foundation and cornerstone of the majority of international human rights doctrines and national constitutions. As the article 19 of the ICCPR states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"<sup>101</sup> The ICCPR came into force in 1976 and ever since has it been an inspiration to Western values when talking about human rights and individual liberties. Basically, free speech means the right to express any opinion without censorship or restraints and by now all the European constitutions and many international organizations have somehow formulated this idea as a fundamental one. Although freedom of expression is usually referred to in a positive context, there are also some negative aspects such as hate speech, defamation and child pornography.

**Hate Speech in Second Life** Firstly, in according to article 20 of the ICCPR: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."<sup>102</sup> Accordingly, hate speech is intended to agitate violence or prejudicial actions against a group of people based on their sexual orientation, ethnicity, race or nationality, for example. Sometimes it may be difficult to draw the line between agitation and peaceful protesting. However, people have begun to unite in SL and there have been virtual protests against multinational companies like IMB, for example. Residents of SL carried signs and banners, which drew global attention to the possibilities of this new phenomenon. It is very easy to imagine that when residents can organize such a positive event it is also possible to use SL as a medium of destruction. Human rights are in danger if terrorists come together in SL to scheme and agitate people to commit violence against the common good: "Al-Qaeda ("the base") and its followers moved to cyberspace, the ultimate ungoverned territory, where jihadists have set up virtual

---

<sup>101</sup> See supra note 5

<sup>102</sup> *Ibid.*

schools for ideological and military training and active propaganda arms.”<sup>103</sup> Indeed it is very important to monitor the situation because the next 9/11 just might be the handy work of the next generation of cyber-terrorists.

**Defamation in Virtual Worlds** Secondly, the negative side of any form of interaction among people is defamation. Defamation is much more distinctive compared to hate speech. In a free society there is a solid presumption that people should be able to speak freely. However, the reality of the potential abuse of this freedom exists in a form of slander and libel that negatively affect someone’s reputation. The defamation laws try to hinder free speech and it allows people to sue those who say or publish false comments. When talking about cyber environments such as SL there are some special considerations like the liability of the system operator, jurisdictional issues and the role of avatars as related to the real-life people behind them. The complexity of cyber defamation is obvious but the fact that residents can both speak to each other with a malicious mind and post a variety of offending publications, creates a tension that needs to be addressed in the future.

**Virtual Child Pornography** Thirdly, virtual child pornography has also raised attention in the context of SL when people have posted child pornography images up for sale. Another problem are avatars with the appearance of a child involved in sexual activities in a cyberspace: “German prosecutors have launched an investigation to find anonymous participants of the online computer game Second Life, who are reportedly buying sex with other players posing as children, as well as offering child pornography for sale.”<sup>104</sup> As a public policy, some countries like Germany have adopted a strict approach prohibiting in theory any kind of posting related to sexual abuse of children.<sup>105</sup> Dissemination, producing or otherwise making

---

<sup>103</sup> Internet Jihad, “A world wide web of terror” *The Economist*, Jul. 12, 2007, available at [http://www.economist.com/world/displaystory.cfm?story\\_id=9472498](http://www.economist.com/world/displaystory.cfm?story_id=9472498) (last visited Dec. 28, 2007)

<sup>104</sup> Connolly, Kate. “Second Life in virtual sex scandal” *The Guardian*, May. 9, 2007. available at: <http://www.guardian.co.uk/technology/2007/may/09/secondlife.web20> (last visited on Apr. 6, 2008)

<sup>105</sup> German Criminal Code (Strafgesetzbuch, StGB), as promulgated on 13 November 1998, translation by the Federal Ministry of Justice, available at: <http://www.iuscomp.org/gla/statutes/StGB.htm> (last visited on Apr. 6, 2008)

child pornography accessible (i.e. computer technology)<sup>106</sup> is prohibited under German Criminal Code section 184(3). However, some countries, most notably the US<sup>107</sup>, do not consider virtual child pornography to be equivalent to pedophilia and, thus there is a conflict of laws present that is neither beneficial to legal certainty and predictability nor to the development of human rights protection in general.

**The Level of Protection Endangers Human Rights** SL and other virtual worlds provide a perfect platform for those who wish to conceal their anti-social agenda and practice disobedience from the rule of law. The vague line between the freedom of speech and hate speech, together with the problem of defamation are reality also in virtual worlds. Human rights can and will be in jeopardy if the ill-minded are allowed to maneuver in peace. In a more individual level, people doing business in SL rely on their (avatars) reputation just as much as entrepreneurs in real-life. Thus, a mere banishment – according to the Linde Labs privacy policy<sup>108</sup> and Community Standard Agreement<sup>109</sup> - from SL does not provide adequate protection in regards to financial losses or damaged to reputation. The question of pedophilia has also been under discussion and it is obvious that the current situation and level of protection is at the same time intolerable and insufficient in accordance to the human rights protection.

#### 5.2.4 Discrimination and Access to Justice

In addition to the above mentioned human rights actualizing in online environment, a closer examination to discrimination and access to justice is needed as regards to virtual worlds. In today's world there is an objective that social classes are diminished, at least in accordance to the international treaty bodies such as ICCPR and its article 2: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

---

<sup>106</sup> See German Criminal Code section 11(3)

<sup>107</sup> See supra note 38

<sup>108</sup> See supra note 97

<sup>109</sup> See supra note 98

property, birth or other status.”<sup>110</sup> However, it would be naive to claim that all kind of discrimination has ended and, thus, people experience different forms of inequality that vary from direct to indirect discrimination occurring at the workplace, home, sports and even in SL nowadays. As a matter of fact, as the recent lawsuits and the popularity of SL indicate, the possibilities are endless. Therefore, in theory, there are no obstacles why discrimination could not take place in a virtual workplace or in a virtual classroom for that matter.

**Discrimination in Second Life** First of all, as in real-life, in SL we can form relationships that have all the same characteristics as in real-life. As there are many unsolved questions related to virtual professions there are, however, real-life problems that have transformed into cyberspace. For example, entrepreneurs in SL have started to segregate people in SL according to their gender in real-life. This kind of discrimination based on sex is live and well in SL escort clubs: “if they were to ever find out one of their “girls” was an RL guy, she/he would be fired on the spot. Club owners claim their customers should be “getting what they pay for”: namely an *SL* experience with a RL woman.”<sup>111</sup> It may seem a bit abstract because avatars are able to change their skin colour and sex from a blink of an eye but it certainly demonstrates how virtual reality and human rights can collide in cyberspace.

Originally, SL was developed as an open community without any restraints; a true non-discriminatory environment. It did not matter what you did or who you were in real-life because through SL you were offered a “second change”. However, the concept grew out of proportion and it became apparent that residents started to distinct people according to their actions in SL. It is common knowledge that whenever large amounts of people live together they have a habit of organizing themselves in groups. This kind of behaviour can lead to disharmony and discrimination among people, both in actual world and in SL. Therefore, it would be beneficial to examine whether the legislative bodies and other officials should pay more attention to “virtual segregation” going on in cyberspace. The lack of real life authority and enforcement methods will eventually lead to chaos, despite the fact that

---

<sup>110</sup> See supra note 5

<sup>111</sup> Ruberg, B. “Gender Discrimination in Second Life Escort Clubs” May. 22, 2007, available at <http://www.heroine-sheik.com/2007/05/22/gender-discrimination-in-second-life-escort-clubs> (last visited Dec. 30, 2007)



in SL there are different unilaterally agreed standards such as the ISTE SL Community Code of Conduct<sup>112</sup> or more official ones such as the Teen Second Life Community Standards<sup>113</sup>.

**Access to Justice and Due Process of Law** Secondly, access to justice and due process of law are fundamental individual rights from the very beginning of the Magna Carta<sup>114</sup> in 1215 and from that point on they were formulated into many international treaty bodies and national constitutions. For example, the European Convention on Human Rights article 6(1) recognizes the right to a fair trial as it states: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”<sup>115</sup> The importance of access to justice is a problematic question when talking about SL because, as mentioned before, the legislation concerning cyberspace is widely incomplete. Even though Linden Lab has created a so-called minimum standard of protection; a code under which residents ought to behave, it is certain that more problems arise when SL continues to grow. It is obvious that when disputes arise between residents or between residents and Linden Lab, an adequate access to justice ought to be available. For those who are not within the jurisdiction of the laws of the state of California this situation is a problematic one. Access to justice is endangered even though TOS Agreement offers an optional arbitration: “For any Claim, excluding Claims for injunctive or other equitable relief, where the total amount of the award sought is less than ten thousand U.S. Dollars (\$10,000.00 USD), the party requesting relief may elect to resolve the Claim in a cost-effective manner through binding non-appearance-based arbitration.”<sup>116</sup>

It is fair to say that it is not an ideal situation, in accordance to the human rights protection, for those wishing to have their case heard because arbitration is usually a

---

<sup>112</sup> Available at: <http://secondlife.iste.wikispaces.net/ISTE+SL+Community+Code+of+Conduct> (last visited on Apr. 15, 2008)

<sup>113</sup> Available at: <http://teen.secondlife.com/footer/cs> (last visited on Apr. 15, 2008)

<sup>114</sup> Magna Carta is considered to be one of the first legal documents outlining individual rights against the rights of a sovereign

<sup>115</sup> See supra note 30

<sup>116</sup> Available at: <http://secondlife.com/corporate/tos.php>, section 7.3 (last visited Jan. 4, 2008)

costly solution as compared to the amount of damages. On the other hand, when damages amount more than 10,000 USD it is not reasonable to assume one to travel abroad to get his or her human rights protected. In general, by using the examples of SL and other virtual worlds the purpose was to demonstrate how human rights can and are being violated. In order to secure proper development of virtual worlds and to ensure that human rights are no longer endangered it is important to search and seek optional solutions and to suggest fresh ideas.

## 6. Proposed Solutions and Some New Ideas

The next chapter will concentrate on finding alternative solutions to human rights problems in cyberspace and to present some completely new and innovative ideas limited only by the author's imagination. It is an attempt to explore the future of human rights in reference to virtual worlds especially as much as to make an educated guess of what will happen next. In order to do that it is necessary to consider what could be done to guarantee that right to property, right to privacy, problems related to freedom of speech, discrimination and obstruction to justice do not actualize even further in next couple of years.

**The Virtual Magistrate Project** The Virtual Magistrate Project<sup>117</sup> was a joint venture between the US National Center for Automated Information Research (NCAIR) and the Cyberspace Law Institute (CLI)<sup>118</sup> in 1995 and the purpose was to examine alternative dispute resolutions to the on-line world. Its function was to: "offer arbitration for rapid, interim resolution of disputes involving (1) users of online systems, (2) those who claim to be harmed by wrongful messages, postings, or files and (3) system operators (to the extent that complaints or demands for remedies are directed at system operators)."<sup>119</sup> This would offer a completely new dimension and an effective decision-making process handled in every respect in an online environment. According to the original plan the arbitration would consider a variety of cases from copyright and trademark infringements to defamation and privacy matters. Parties would represent their arguments and claims via e-mail in order to find a low-cost and rapid remedy within 72 hours after filing a complaint. However, the notion of online litigation is sensitive for criticism.

In accordance to international law there are many problems related to this kind of privatized decision-making. For example, the acceptance of magistrates could be difficult to carry out in an international scale because states might not want to recognize judicial competence and give up their sovereignty for this kind of body

---

<sup>117</sup> The Virtual Magistrate Project, Jul. 24, 1996, available at:

<http://www.vmag.org/docs/concept.html> (last visited on Apr. 21, 2008)

<sup>118</sup> More information available at: <http://www.cli.org/> (last visited on Apr. 21, 2008)

<sup>119</sup> See supra note 117

consisting exclusively of nationals of one state. Additionally, lack of transparency and publicity for this kind of “faceless” decision-making process might be difficult to justify in accordance to public view.

In my opinion, virtual worlds offer an interesting alternative to this kind of litigation conducted via e-mails and other technical means. Virtually held proceedings in SL, for instance, could be held publicly open for all to see and it would simultaneously reduce any problems related to transparency. The “faceless” decision-making body would get an appearance as avatars could act as judges and attorneys. The problem of recognition could also get an approval of international community if virtual courts would be based on human rights doctrines and jurisdictional rules. States might be more open to co-operate if the basis of this kind of virtual courts could be based on the need to protect our fundamental rights and freedoms. As the European Court of Human Rights was established to monitor human rights compliance in real life, it would be beneficial to create international tribunal for human rights in cyberspace. It could be based on the same principles under the same monitoring mechanism but at the same time it would offer the extra dimension needed to protect human rights in an online environment.

**Virtual Law Enforcement** Virtual worlds have raised the attention of the law enforcement agencies such as the US Central Intelligence Agency (CIA), for instance and, thus they also have established a presence at SL: “The CIA created a few virtual islands for internal use, such as training and unclassified meetings, government officials said.”<sup>120</sup>The potential usage of virtual worlds can offer law enforcement officials benefits namely in areas like firearm training, incident re-creation and crime scene processing.<sup>121</sup>As it is technically possible to participate in something like incident re-creation it would be simple enough to establish a “virtual police” in virtual worlds such as SL. Of course, the notion itself lacks both international recognition and authorization according to international laws, but in theory it could be used to

---

<sup>120</sup> O’Harrow Jr. P, “Intelligence Officials See 3-D Online Worlds as Havens for Criminals”, *The Washington Post*, Feb. 6, 2008, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/05/AR2008020503144.html?wpisrc=newsletter&wpisrc=newsletter> (last visited on Apr. 21, 2008)

<sup>121</sup> More information available at: [http://www.totse.com/en/law/justice\\_for\\_all/vrlawen.html](http://www.totse.com/en/law/justice_for_all/vrlawen.html) (last visited Apr. 21, 2008)

investigate possible infringements to human rights as much as to monitor the situation in an online environment.

In my view, the “virtual police” could offer us valuable information to human right violations and acts as an unofficial “night watchman” if it had a backing of international consensus. This kind of co-operation could be easily carried out with the help of states, supranational organizations and other NGOs interested to protect human rights in a global scale. In other words, it is possible to oversee what happens online but in practice the international doctrines and lack of knowledge hinders the application of today’s technology for better use.

## 7. The Future of Human Rights in the Digital Age

For the sake of cyber generation it is both beneficial and important to try to predict what lies ahead in cyberspace in the context of human rights. Anticipating the future is a difficult task but in virtual worlds where there are no clear laws or regulations it is practically impossible. There is very little legal tradition or customary laws into which one can rely on when predicting the future of cyberspace. However, in order to envisage the development and its effect to human rights, it is necessary to analyze the recent official discussions such as the first-ever US Congressional hearing<sup>122</sup> on virtual worlds on April 1, 2008 and the Virtual Law Conference<sup>123</sup> held in New York City on April 3-4, 2008.

**The US Congressional Hearing on Virtual Worlds** The Congressional hearing related to; “Online Virtual Worlds: Applications and Avatars in a User-Generated Medium”, took place in Washington by the Committee on Energy and Commerce’s Subcommittee on Telecommunications and the Internet (hereinafter the Committee). The purpose was to educate and sort out the prospects of virtual worlds and among the participants were many highly profiled guests such as the Linden Lab’s soon-to-be former CEO and founder Philip Rosedale, for example. The agenda was to analyze concerns related to consumer protection, intellectual property protection and child protection among other things. Much of the attention was paid on speculation of child abuse occurring on virtual worlds and thus, Mr. Rosedale responded: “We developed Teen Second Life for kids aged 13-17. With the exception of Linden Lab staff (who are available to help) and educators (who undergo a background check), no adults are permitted to interact with these users. We are committed to providing a safe environment for our teen residents.”<sup>124</sup> However, the Committee’s response was suspicious to the self-reporting system related to resident’s age and to whether the

---

<sup>122</sup> The Subcommittee on Telecommunications and the Internet, “Online Virtual Worlds: Applications and Avatars in a User-Generated Medium”, Apr. 1, 2008, available at: [http://energycommerce.house.gov/cmte\\_mtgs/110-ti-hrg.040108.VirtualWorlds.shtml](http://energycommerce.house.gov/cmte_mtgs/110-ti-hrg.040108.VirtualWorlds.shtml) (last visited on Apr. 14, 2008)

<sup>123</sup> More information available at: <http://www.virtuallawconference.com/> (last visited on Apr. 14, 2008)

<sup>124</sup> Rosedale, P, prepared statement before the Subcommittee on Telecommunications and the Internet, Energy and Commerce Committee U.S. House of Representatives, Apr. 1, 2008, available at: [http://energycommerce.house.gov/cmte\\_mtgs/110-ti-hrg.040108.Rosedale-testimony.pdf](http://energycommerce.house.gov/cmte_mtgs/110-ti-hrg.040108.Rosedale-testimony.pdf) (last visited on Apr. 14, 2008)

level of protection is adequate enough to guarantee safeguards against child abuse. Nevertheless, the hearing was a novel idea as it was one of the first legislative inquiries to virtual worlds. The impact of the hearing itself is unsure but it certainly demonstrates the importance of virtual worlds if legislative bodies feel that it is necessary to consider possible violations materializing in virtual environment. Therefore, it can be assumed that it is only a matter of time when human rights organizations and officials address issues of virtual worlds if they continue to develop as they have.

**The Virtual Law Conference 2008** The Virtual Law Conference 2008, on the other hand, was held just recently and among the participants were top professionals and pioneers of cyber law, together with the multinational companies like Microsoft Corporation, Sony Corporation and the Walt Disney Company etc. On the agenda were intellectual property enforcement, legal issues in virtual currency, legal issues in virtual property, ethical concerns for attorneys and executives in virtual worlds and how to litigate a virtual law suit, for example. The summit lasted for two days and the purpose was to address issues such as trademark and copyright violations in virtual worlds, the distinction of tangible property and virtual property and to discuss potential difficulties with employer-employee relationship and attorney-client communication. This kind of gathering can only be beneficial because speculation is needed as regards to the potential virtual applications and features that might have influence to our fundamental freedoms in the long run. The main focus of the conference itself might have been on business-orientated aspects but, nonetheless, at the same time it tackled many interesting questions that are simultaneously relevant to human rights law. It remains to be seen whether some kind of legislative initiatives result from this but at least people have begun to recognize the need to pay attention to what happens in virtual worlds.

## 8. Conclusion

In the course of this thesis I have analyzed and discussed how cyberspace, and most importantly how virtual worlds alter the customary human rights law. The line between the real world and fantasy has blurred but at the same time activities engaged in virtual environment are interconnected with the real world. Since the late 19<sup>th</sup> century the information and computing technology and the widespread adoption of the Internet has dramatically changed the way people communicate and socialize with each other. However, along with all the fuzz and hype related to communication revolution, the downside of the progress is left without the needed attention. The scope of human rights protection should stretch out to cyberspace as violations to individuals' freedom and integrity are possible in virtual worlds of the Internet, for example.

In chapter two the aim was to explore the possibility of imposing liability on human rights violations to individuals, even though according to traditional international human rights doctrines the duty to bear consequences has traditionally been on states. By analyzing the classical division of human rights into generations, the purpose was to demonstrate that non-state actors and other NGOs should also be subjected under scrutiny according to international human rights protection. In addition, the focus was on the controversial dichotomy between the private and public actors as it is no longer practical to obtain such a strict distinction. Finally, the focus was on the question about whether individuals possess legal personality according to international norms, application of universal jurisdiction principle and the division between the national and international human rights protection.

Chapter three was devoted to the dangers to human rights in the digital age. Problems related to exploitation of woman and virtual child pornography were highlighted by using ravage examples of how it is possible to abuse human rights with the help of modern information and computing technology. In the same context the question of liability of the Internet Service Providers was addressed and examined in the light of recent case law. Furthermore, issues such cyber censorship and digital surveillance were closely analyzed due to their vast effect and relevance to human rights such as freedom of speech and privacy.



Fourth chapter illustrated and analyzed complicated issues related to jurisdictional principles in cyberspace. The purpose was to examine different types of jurisdiction rules and doctrines and to point out the confusing and unsettled nature of the cyberspace. By the same token the universal choice of law principles were described in order to clarify the ground rules of jurisdiction on a global scale. In addition, the attention was paid to the rules determining the right forum to try the case and to how to enforce judgments between parties from different states.

In chapter five the idea was to emphasize the importance and relevance of virtual worlds in our real life. The vast effect they have had to people's communication can simultaneously jeopardize our fundamental rights and freedoms. The main focus was on the virtual world called Second Life because it had encountered numerous real life lawsuits that could be used to both analytical study and education. Virtual property litigation, copyright violations, privacy infringements, defamation and virtual child pornography together with access to justice and due process of law issues were discussed to demonstrate that human rights are endangered in cyberspace. Additionally, the purpose was to review some of the adopted international treaties and private suggestions covering cyberspace that also might have an influence to virtual worlds in near future. The overall intention was to bring out the novelty of virtual worlds and to call attention to potential threats to human rights.

Chapters six and seven were motivated by the need and desire to find a solution for human rights violations occurring in virtual worlds of the Internet. The possibilities of virtual courts and virtually held proceedings were based on different notions from different authors and official suggestions and even further developed by the author itself. Also the potential application of "virtual police" was presented to highlight that in theory it would be possible to monitor the situation in cyberspace. In coincide with the suggested innovative ideas, the discussion was on the first-ever US Congressional Hearing on Virtual Worlds and on the Virtual Law Conference, which were both held on April 2008. These official gatherings represent the most recent views and opinions to virtual worlds and, thus it was fundamental to seek whether they had anything to offer in view of human rights law as well.

In overall, this thesis is an attempt to close the gabs between real life and cyberspace because virtual environment offers a completely new stage for human rights violations. Human rights infringements in cyberspace are a part of today's reality even though virtual worlds go live only trough our computer screens. Real life people act behind avatars and, thus, a real life protection is needed when talking about human rights violations occurring in cyberspace. What used to be possible only in science fiction novels has become modern-day reality.

# References

## Literature

Charlesworth, H & Chinkin, C, "The boundaries of international law – A feminist analysis" (2000)

Clapham, A, "Human Rights in the Private Sphere" (1993), Introduction

Coomans F. and van Hoof, F, The Right to Complain about Economic, Social and Cultural Rights: Proceedings (of the Expert Meeting on the Adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Utrecht, 25-28 January 1995)

Gerald R. Ferrera et al., "Your Rights in Cyberspace" (2001)

Klang, M & Murray, A, "Human Rights in the Digital Age" (2005), chapter 2, p 15, Chatterjee, B, "Pixels, Pimps and Prostitutes: Human Rights and The Cyber-Sex Trade

Klang, M & Murray, A, "Human Rights in the Digital Age" (2005), chapter 5, p 65, Rowland, D, "Free Expression and Defamation"

Klang, M & Murray, A, "Human Rights in the Digital Age" (2005), chapter 8, p 104, Esler, B, "Filtering, Blocking and Rating: Chaperones or Censorship?"

Klang, M & Murray, A, "Human Rights in the Digital Age" (2005), chapter 9, page 117, Rowland, J, D and Villeneuve, N, "Firewalls and Power: An Overview of Global State Censorship of the Internet"

Sunga, S, "Individual Responsibility in International Law for Serious Human Rights Violations" (1992),

## Other Publications

Barlow, JP, "A Declaration of Independence for Cyberspace" (1996)

Connolly, Kate. "Second Life in virtual sex scandal" [The Guardian](#), May. 9, 2007

Duranske, B. "Reader Roundtable: "Virtual Rape" Claim Brings Belgian Police to Second Life", Apr. 24, 2007

"Gender Discrimination in Second Life Escort Clubs" May. 22, 2007

Gerosa, M and Shahrani, S, "Convention for the Protection of Virtual Architectural Heritage" (2006)

Hughes, D, "The use of new communications and information technologies for sexual exploitation of woman and children" (2002) 13(1) *Hastings Woman's LJ* 129

Internet Jihad, "A world wide web of terror" [The Economist](#), Jul. 12, 2007

Koster, R. "The Declaration of the Rights of Avatars", Aug. 27, 2000,

Nari, L. "Challenges to Transnational Enforcement of Intellectual Property" (IPRinfo Magazine 2/2000)

O'Harrow Jr. P, "Intelligence Officials See 3-D Online Worlds as Havens for Criminals", The Washington Post, Feb. 6, 2008

"Second Life Sex Software Prompts Real-World Lawsuit" FOXNew.com, Aug. 10 2007

Thomasson. E. "Police arrest teenage online furniture theft." Reuters Nov. 14 2007

## Visited Websites

<http://www.childnet-int.org/downloads/combating-child-pornography.pdf> (last visited on Feb. 23, 2008)

<http://www.cli.org/> (last visited on Apr. 21, 2008)

<http://cyber.law.harvard.edu/cyberone/videos/CyberOne.mp4> (last visited on Mar. 27, 2008)

[http://ec.europa.eu/information\\_society/activities/sip/projects/targeted/filtering/closed\\_project/icrasafe/index\\_en.htm](http://ec.europa.eu/information_society/activities/sip/projects/targeted/filtering/closed_project/icrasafe/index_en.htm) (last visited on Feb. 26, 2008)

<http://earth.google.com/> (last visited Mar. 25, 2008)

[http://www.ecpat.net/eng/ecpat\\_inter/publication/Other/English/Html\\_page/ecpat\\_prot\\_child\\_online/files/internet8.htm](http://www.ecpat.net/eng/ecpat_inter/publication/Other/English/Html_page/ecpat_prot_child_online/files/internet8.htm) (last visited on Feb. 23, 2008)

[http://energycommerce.house.gov/cmte\\_mtgs/110-ti-hrg.040108.VirtualWorlds.shtml](http://energycommerce.house.gov/cmte_mtgs/110-ti-hrg.040108.VirtualWorlds.shtml) (last visited on Apr. 14, 2008)

<http://europe.rights.apc.org/eu/saferuse.html> (last visited on Feb. 26, 2008)

<http://www.habbo.com/>(last visited Mar. 25, 2008)

<http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/nurembergACCOUNT.html> (last visited on Mar. 20, 2008))

<http://www.net-protect.org/en/default.htm> (last visited on Feb. 26, 2008)

<http://www.saferinternet.org/ww/en/pub/insafe/index.htm> and [www.rsf.org/article.php3?id\\_article=2959](http://www.rsf.org/article.php3?id_article=2959) (last visited on Feb. 27, 2008)

<http://secondlife.com/>(last visited Mar. 25, 2008)

<http://secondlife.com/corporate/cs.php> (last visited Dec. 27, 2007)

<http://secondlife.com/corporate/privacy.php> (last visited Dec. 27, 2007)

<http://teen.secondlife.com/footer/cs> (last visited on Apr. 15, 2008)

<http://secondlife.com/corporate/tos.php>, section 7.3 (last visited Jan. 4, 2008)

[http://secondlife.com/whatis/ip\\_rights.php](http://secondlife.com/whatis/ip_rights.php) (last visited Mar. 27, 2008)

<http://secondlife.iste.wikispaces.net/ISTE+SL+Community+Code+of+Conduct> (last visited on Apr. 15, 2008)

<http://www.tgdaily.com/content/view/35730/98/> (last visited Mar. 25, 2008)

<http://www.there.com/>(last visited Mar. 25, 2008)

[http://www.totse.com/en/law/justice\\_for\\_all/vrlawen.html](http://www.totse.com/en/law/justice_for_all/vrlawen.html) (last visited on Apr. 21, 2008)

<http://www.virtuallawconference.com/> (last visited on Apr. 14, 2008)

<http://www.wired.com/gaming/virtualworlds/news/2006/02/70153> (last visited on Mar. 27, 2008)

## **Table of Legislative Acts**

### **United Nations**

Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Rome, 4.XI.1950

Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967 and as amended on September 28, 1979

Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986

Economic and Social Council Resolution 1235 (XLII), 42 U.N. ESCOR Supp. (No. 1) at 17, U.N. Doc. E/4393 (1967)

Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 127 (2003).

Human Rights Committee, General Comment 7, Article 7 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 129 (2003).

Human Rights Committee, General Comment 9, Article 10 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 131 (2003).

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976

International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976

Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Feb. 6, 1996, UN Doc. E/CN.4/1996/53

Report of the Special Rapporteur of the Commission on Human Rights on the right to food, Aug. 26, 2003, in accordance with General Assembly resolution 57/226

Report of the Committee on the Elimination of Racial Discrimination, (Thirty-sixth session, 1988), Communication No. 1/1984: Netherlands. 29/09/88. CERD/C/36/D/1/1984

Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 6.XI.1990 This Protocol has been repealed as from the date of entry into force of Protocol No. 11 (ETS No. 155) on 1 November 1998

Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, Strasbourg, 11.V.1994.

Since its entry into force on 1 November 1998, this Protocol forms an integral part of the Convention (ETS No. 5)

Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

WIPO Copyright Treaty, adopted in Geneva on December 20, 1996

WIPO Performances and Phonographs Treaty, adopted in Geneva on December 20, 1996

## **European Union**

Council of Europe's Convention on Cybercrime CETS No.: 185, Nov. 23, 2001

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce")

## **National Legislation**

Constitution of Finland, adopted on: 11 June 1999, in force since: 1 March 2000, Chapter 2 Basic rights and liberties, Section 15 Protection of property

German Criminal Code (Strafgesetzbuch, StGB), as promulgated on 13 November 1998

Restatement (Third) of the Foreign Relations Law of the U.S. § 401 cmt. a (1987)

## **Other Official Documents**

Intellectual Property and Human Rights Panel Discussion to commemorate the 50th Anniversary of the Universal Declaration of Human Rights (Geneva, November 9, 1998)

Report of the American Bar Association ("ABA"), Achieving Legal and Business Order in Cyberspace: a Report on Global Jurisdiction Issues Created by the Internet

Statement prepared by Rosedale, P, before the Subcommittee on Telecommunications and the Internet, Energy and Commerce Committee U.S. House of Representatives

## Table of Cases

### European Court of Human Rights

*De Wilde, Ooms and Versyp v. Belgium, (No 1)* (1971) 1 EHRR 373 (June 1971)

*Halford v. United Kingdom*, (20605/92) [1997] ECHR 32 (25 June 1997)

*Lawless v. Ireland* (No. 1) - 332/57 [1960] ECHR 1 (14 November 1960)

*Yilmaz--Dogan v. Netherlands, Committee on the Elimination of Racial Discrimination*  
Communication No. 1/1984: Netherlands. 29/09/88 CERD/C/36/D/1/1984

### US Case law

*Ashcroft v The Free Speech Coalition*, No. 00—795. Argued October 30, 2001—Decided April 16, 2002

*Cubby v. CompuServe Inc*, No. 90 Civ. 6571, United States District Court, S.D. New York, Oct. 29, 1991

*Eros, LLC et al v. Thomas Simon* Case 1:07-cv-04447-SLT-JMA Document 1 Filed 10/24/2007

*International Shoe Company v. Washington State*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)

*Marc Bragg v. Linden Research, Inc. and Philip Rosedale*, Civil Action NO. 06-4925 May 30, 2007

*Playboy Enterprises, Inc. v. Chuckleberry Publishing, Inc.*, 939 F. Supp. 1032 (S.D.N.Y. 1996)

*Reno v. American Civil Liberties Union*, No. 96-511, Argued March 19, 1997—Decided June 26, 1997

*Stratton Oakmont, Inc. v. Prodigy Services*, 1995 N.Y. Misc. LEXIS 229, 1995 WL 323710, 23 Media L. Rep. 1794 (N.Y. Sup. Ct. May 24, 1995)

*Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)

### Other cases

Attorney-General of the Government of *Israel v. Eichmann* (Dist. Ct. Jerusalem) (1961), 36 Int'l L. Rep. 5.



## Glossary of Abbreviations, Acronyms and Terms

### Legal

ABA	American Bar Association
CDA	Communications Decency Act
COPA	Child Online Protection Act
CIPA	Children's Internet Protection Act
CLI	Cyberspace Law Institute
CPPA	Child Pornography Prevention Act
Due process	Fair treatment
ECHR	European Court/Convention of Human Rights
ECOSOC	Economic and Social Council
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
In personam	Person
In subjectam	Subject
Jus cogens	Principles that cannot be set aside
Laissez-faire	Without interfering
Mala fide	In bad faith
NGO	Non-governmental Organization
Ordre public	Public order
Status quo	The existing state of affairs
UN	United Nations
UDHR	Universal Declaration of Human Rights
WIPO	World Intellectual Property Organization

### Technical

Avatar	Icon representing a person in cyberspace
Blog	Personal Website (i.e web log)
Cyberspace	Online environment in which people interact via computer networks
Ebay	Online auction
Firewall	System or network designed to block unauthorized access
ICT	Information and computing technology
ISP	Internet Service Provider
MMORPG	Massively multiplayer online role playing-games
Morphed images	Counterfeited image
NCAIR	National Centre for Automated Information Research
Proxy servers	Computer networks
Pseudo-photographs	Image produced manually from a real photograph
Routers	Device that forwards data packets in computer networks
SL	Second Life
Software	Programs and other operating information used by a computer
Virtual world	Computer based simulated environment