

VIRTUAL CRIMES

by

TOMÁŠ GŘIVNA*

The article deals with the problem of “virtual crime”. But, what is a “virtual crime”? Is it something different from a “crime”? Recently, a virtual crime refers to a virtual criminal act (e.g. virtual mugging, virtual sweatshop, virtual rape, and virtual theft) that takes place in a massively multiplayer online game (see Wikipedia; phrase “Virtual Crime”). The article focuses also on the phenomena of present days - “Second Life” (a 3-D virtual world entirely created by its residents). Second life is not used only for fun. Nowadays it could be a source of significant gains. So, it attracts attention also by cheaters who want to gain money by illegal actions. Are such acts different from the traditional crimes in the real world punishable by the criminal law? Do they need a special legislation?

INTRODUCTION [1]

I would like to devote this short paper to the phenomena of recent years. The development of modern technologies and the internet gave rise to so-called Massively Multiplayer Online Game. Besides, but in relation to it, the development brought into being certain types of acts generally identified as “virtual crimes” (virtual offences). But, what do “virtual crimes” mean?

For the definition of such term, it will be practicable to mention two well-known examples defined as virtual crimes.

Example 1: There was a huge wave of media interest related to the case of Qiu Chengwei who was sentenced to life imprisonment for the murder of Zhu Caoyuan. Nothing unusual, but the mens rea of the murder was

* Právnická fakulta Univerzity Karlovy, Katedra trestního práva, nám. Curieových 7, Praha 1. grivna@prf.cuni.cz

bizarre. Within the game called *The legend of Mir 3* (game type: MMORPG), Mr. Zhu borrowed very powerful and useful weapon from Mr. Qiu – the sword (precisely: a dragon sabre). Subsequently, Mr. Zhu did not return the weapon to Mr. Qiu and, on the contrary, sold it via internet gateway eBay for Yuan 7,200 (approx. GBP 473 or USD 870).

Example 2: I would like to mention one case from recent days – theft of virtual furniture.¹ In November 2007, a seventeen-year old boy was arrested, because he stole furniture from one room in game called *Habbo Hotel* (game type: MMOG) and, presumably, transferred it to another hotel room. This “virtual furniture” was originally purchased for Habbo credits which can be bought only for real money. The damage caused by the theft was estimated to be approx. EUR 4,000. The Dutch police will examine 4 other 15-year-old boys together with the arrested boy who are suspected from gaining illegally the login and password of another player.

We can infer from the abovementioned examples that “virtual crimes” are mainly limited to so-called MMOG (Massively Multiplayer Online Game). However arguable such approach to virtual crimes may be, as both words “virtual” and “a crime” or “an offence” have certainly distant and, partially, (more or less) different content, I will follow the wide-spread approach in my contribution and will try to provide few comments which, I hope, could make up the grounds for possible discussion.

MASSIVELY MULTIPLAYER ONLINE GAME [2]

I would like to remark some facts about Massively Multiplayer Online Games before I outline several problems connected to them. A Massively Multiplayer Online Game is one type of multiplayer online game (MOG, OGM); it is a video game accessed and played by thousands players simultaneously, regarding the fact that the Internet access and at least one permanent virtual world are essential conditions. MMOG can have different forms (MMORPG – Massively Multiplayer Online Role-playing Game, MMORTS – Massively Multiplayer Online Real Time Strategy, MMOFPS – Massively Multiplayer Online First Person Shooter, MMOSG – Massively Multiplayer Online Social Game, etc.). The first graphic MMOG occurred presumably in 1987 (*Air Warrior*); however, the boom of this game type

¹ <http://news.bbc.co.uk/2/hi/technology/7094764.stm>

came at the end of 1990s. In these days, World of Warcraft and Lineage 2 are considered as the most popular among MMOG.

The most recent phenomenon in the scope of MMOG is Second Life² (game type: MMOSG). The authors (Linden Lab as the operator) refuse to use the term “game” and come with a new term “3D virtual world”. Second Life is a parallel virtual world with its inhabitants (10,788,867 avatars up to November 6, 2007) who perform their own ideas and needs – they communicate, meet with new friends, build houses, see new places, buy, study, entertain themselves in bars or cafés, dance in juke joints. On the other hand, this world is not just for fun. Even worldwide known companies like Dell, IBM, Vodafone, Philips, Mazda, Adidas and hundreds of others join this world, for example for new products testing and for the support of real product sale.

The connection between virtual and real world can be carried out on several levels. Recently there was a media announcement that Second Life has its first millionaire – Anshe Chung (an avatar created and operated by Ailin Graef and her husband) who earned his first million by virtual real estate trading.³ Although you can pay only with linden dollars in Second Life, they can be purchased and sold for real money (US dollars) in LindenX exchange office (the Second Life official exchange office) or in exchange offices of third parties. There are rumors about the policy of several states (e.g. Australia) which would like to have real taxes levied from virtual profits. The attempts to introduce payments directly in Second Life were terminated by curious strike; the users preprogrammed their characters to burn, so they discouraged newcomers.⁴

The operating terms of Linden Lab assign all rights to the authors of the created digital content; this involves created characters, clothing, scripts, textures, objects and other design. The wide possibilities of Second Life give leeway for fraudulent acts and for infringements of intellectual property law. There was an announcement last month that six dealers offering their goods in Second Life filed an action against another user for an illegal copy

² <http://www.secondlife.com>

³ <http://www.hrej.cz/novinky/2007/10/24/second-life-slavi-prvniho-virtualniho-milionare/>

⁴ http://technet.idnes.cz/second-life-skorozivot-na-siti-vydelava-realne-penize-ppp-/sw_internet.asp?c=A070906_214822_sw_internet_vse (10.11.2007)

of digital wares. The plaintiffs, inter alia, claimed damages in the triple amount of their loss of profit.⁵

Even in other MMOG types you can find individuals abusing the virtual environment with the intent to enrich themselves. We can include e.g. gold farming or virtual mugging among the well-known illegal practices.

You can encounter the so-called gold farming on a number of occasions. There exists some kind of virtual economics in the majority of MMOG based on a virtual payment unit (currency) which players can get in different ways. However, some players do trades with these virtual units outside the game itself (for current money). It is not an exception that some people use this kind of activity for own profit. These practices, if not allowed by game rules, are immoral as they create disparity among players; as a result, some game operators refuse those practices and punish players e.g. by eliminating them from the game. Moreover, players can do trades outside the game even with the characters or objects gained during the game itself. The principal aim of the player is not the pleasure from the game, but the acquisition of virtual goods (e.g. weapons) which he can turn into current money by selling them to other players.

Furthermore, we can encounter the virtual extortion (virtual mugging); this act can be defined as the abuse of a stronger player role against a weaker player for own profit. E.g. a player having dominance over another player requests him to pay ransom for the protection (for not exercising the force against the weaker player).

PUNISHMENT OF VIRTUAL CRIMES UNDER THE CRIMINAL CODE [3]

We may certainly find other activities which might be considered as virtual crime; we can discuss virtual rapes, virtual murders etc. However, it is essential to ask ourselves a question - whether and what acts shall or should be punishable by criminal law.

Even though many laypeople do not realize so, a significant number of virtual crimes has already been punishable by criminal law. We can make it clear by the definition that the qualified facts of a crime arise from the abstraction of certain acts dangerous for society. The more general the quali-

⁵ Birgas, J. Žaloba za virtuální zločin. *Expres*, 30.10.2007, pp. 9

fied facts of a crime are, the more extensive the range of subordinated acts would be. It is thus possible to subordinate acts not even foreseeable by the legislator under existing qualified facts of a crime; nevertheless, this possibility is limited. The elements of crime may not be defined in such a general way that it would encompass all acts dangerous for society. This could result in only one criminal act defined by the Criminal Code, which, as you may guess, is impossible. Moreover, too generally defined qualified facts of a crime would contradict the principle of “*nullum crimen sine lege*” and the principle of legal certainty. The substance of the whole issue therefore suggests that the existing criminal acts cannot fully cover all types of conduct dangerous for the society. Therefore it is up to legislator to consider the criminalization of certain acts by creation of new qualified facts.

Let’s have a brief look at the possibility of punishment of the mentioned virtual crimes under Czech criminal law.

The case of embezzlement related to virtual sword would be (under the Criminal Code, as amended) punishable under the crime of embezzlement (sec. 248), defined as the appropriation of entrusted thing or other property values of another and the damage caused to the property which is not negligible (i.e. damage in the amount of at least CZK 5,000). Until recently it was possible to embezzle only things, i.e. movable and immovable property; the amendment of the Criminal Code (Act No. 253/2006 Sb., effective as of July 1, 2006) made it possible to subordinate the embezzlement of other property values under the definition of the criminal act of embezzlement. The whole question gets complicated when the embezzled virtual thing is not owned directly by the player, but solely lent to him by the game operator. The virtual thing is not allowed to be used outside the game, no matter in whose possession. From the operator’s point of view, this act would mean nothing more than the use of a virtual thing by an unauthorized person (in violation of competition rules, at the most).

The legal qualification of the “virtual furniture theft” would be, to a certain extent, more complicated. It is necessary to exclude provisions with the term “someone else’s thing” as the legal element of a crime (e.g. the criminal act of theft) from the application in this case. Therefore it is not possible to define such conduct as a criminal act having misrepresentation or abuse of innocent mistake as the legal element, because the game log-on by the oper-

ator is done automatically (without any human factor), so there is no chance that anyone could be misrepresented. Finally, it is necessary to consider the possibility of criminal act regulated by sec. 257a of the Criminal Code (damaging or misusing a record on data carrier). The offender got the access to the data carrier and changed these data with intent to gain profit.

The theft of a virtual thing created by the user, the outcome of his creative activity accordingly, should be protected under the intellectual property law provisions. In case of virtual thing "theft" or replication, the situation may be considered as an illegal breach of copyright, which may result, under serious circumstances, in the crime of infringement of copyright (sec. 152 of the Criminal Code).

The abovementioned virtual extortion is nothing but a modification of common extortion. A person who forces another by violence, the threat of violence or the threat of another serious detriment, to do something, to desist from doing something or to suffer something, commits the extortion. It is controversial whether we can consider the conduct as the threat of serious detriment; there is no decision on a similar case yet. However, the theory and jurisprudence agree that the threat of other serious detriment may subsist in the threat of property damage, severe harm to honour and goodwill, or the threat can be aimed at disruption of marriage or family life. While analyzing other serious detriment, it is essential to consider the personal circumstances of the offender, his maturity, experience, mental condition, etc.⁶

It is not possible to prosecute cases of a virtual rape because the sexual intercourse is one of qualified facts of this crime; i.e. there must be a direct contact between the offender and the victim. Either the murder of avatar or virtual character is not conceivable (under current legal situation) for the same reason. A different perspective can be taken if the mentioned acts would result in bodily (particularly mental) harm to the player. Under certain circumstances, it would not be possible to exclude the criminal liability of the "offender" or "murderer" for the harm caused to other player (e.g. player A knows player B and his dependence on his avatar which is of the nature that player B would mentally break down if he lost the avatar. In intention to do this harm, player A "kills" the avatar, what results in the mental breakdown of player B and his subsequent hospitalization in asylum for

⁶ Šámal, P. et al. 2006, *Trestní zákon. Komentář*: 6. vydání, C.H.Beck, Praha.

several months. In this case, the player might be liable for the crime of bodily harm under sec. 222 (1) of the Criminal Code).

GENERALIZING COMMENTS [4]

We can continue listing the acts which may be considered as virtual crimes and their qualification under provisions of the Criminal Code for a long time. However, it is not my ambition to give you the complete list; I will try to make certain comments generalizing the issue.

Computers and cyberspace give a wide leeway for performance of acts dangerous for society. One part of such conduct is punishable under the provisions of criminal law. For better understanding, we could divide these criminal acts into three groups:

1. traditional criminal acts – (“old wine in a new bottle”) these crimes are punishable under provisions for traditional criminal acts which may be committed even without the connection to virtual world (e.g. extortion, infringement of copyright),
2. traditional criminal acts with modified elements as to include computer (cybernetic) crime (e.g. embezzlement – it is possible to embezzle other property values), or indirectly by widening the interpretation of the provision (e.g. sec. 89 (18)) – misleading somebody or making use of somebody else’s mistake can also be attained by interference with a computer software, by making another computer operation, by interference with electronic or other equipment, including controlling systems, microchips, magnetic, optical or other special recording devices, or by misusing such operation or interference having been carried out by another person),
3. crimes specially created for the purpose of the protection of society against the computer or cybernetic crime (e.g. sec. 257a of the Criminal Code). This group is in a particular position against the two groups mentioned above - it was construed as to provide punishment for such acts which are not subject to punishment (or punishable with difficulties) under groups 1 and 2.

The part of acts identified as virtual crimes are unpunishable under provisions of the Criminal Code (virtual rape, virtual murder, virtual bigamy etc.). This is the right moment to consider whether this conduct represents

such a dangerous behavior as to punish it under criminal law which serves as the ultimate instrument for the protection of society (*ultima ratio*). If so, we have to decide whether we shall modify the elements of existing criminal acts or to create new qualified facts.

SUMMARY [5]

The dynamic development of information technologies persists in creating new and new occasions for the performance of acts dangerous for society. One part of such conduct is not punishable under existing provisions of the Criminal Code. Therefore we shall consider whether to modify the elements of criminal acts or to create other qualified facts of a crime. This idea applies to such conduct defined as virtual crimes; it is not possible to identify them as a new category of criminal acts. Some of them are punishable under existing provisions of the Criminal Code, even under different provisions than a lay person would say (e.g. theft of “virtual furniture” shall not be punishable under the theft provision, but under the provision on damaging or misusing a record on data carrier or under the provision on the infringement of copyright).

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