

# Virtual Identity & Virtual Property

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## Introductory remarks

- Virtually online
  - problems of enforcement
  - issues of identity & location
- Identity
  - as legal security
  - as private life
  - as property

## Problems of enforcement

- Yahoo auction website with Nazi memorabilia
- Breach of French Penal Code, art. 645-1
  - Court order to take all necessary measures to dissuade use & restrict the ability to access
- Appointment of panel of experts
  - geographical identification of IP address
    - already carried out for advertising purposes
  - declaration of nationality
- Yahoo policy & US district court appeal

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## Identity & location

- Consumer protection rules
  - transparency
    - Directive 00/31/EC, art. 5(1) identity & location
- Taxing eCommerce
  - 02/38/EC on application of VAT to services delivered by electronic means
    - credit card billing address, IP address and self declaration, online VAT check
- Choice of law and forum

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## Signatures

- Legal requirements
  - e.g. Consumer Credit Act 1974
- Legal functions
  - identity
  - intention to be bound
  - integrity of document
    - person to signature
- Regulating for trust
  - ‘advanced electronic signatures’

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## Personal information

- Data Protection Act 1998
  - personal information as private life
    - ‘identifiable directly or indirectly’
  - offence of unlawful obtaining with data controller’s consent
  - control usage
    - consent, direct marketing, substantial damage or distress
- Breach of confidence
  - personal information as valuable asset
    - *Douglas v Hello!* (2003)

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## Anonymity

- The problem
  - anonymous remailers , dynamic IP address allocation & corporate users, cybercafes...
- EU Ministerial Statement 1997
  - “where the user can choose to remain anonymous off-line, that choice should also be available on-line”
    - e.g. digital cash
- Obligations to anonymise
  - e.g. Directive 02/58/EC re: ‘traffic data’

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## Information as property

- Intellectual property rights
  - patents, copyright, database right
- Information per se
  - *Oxford v Moss* (1979)
  - obligations of confidence, computer misuse
- Identity theft
  - FTC estimated at \$53bn in 2003
  - proposed new offence
    - “use a means of identification of another person or a fictitious person without reasonable cause”

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## Forensics & virtual identities

- Communication service provider/service provider
- Criminal access
  - Data Protection Act 1998, s. 29(3)
  - Regulation of Investigatory Powers Act 2000
    - ‘communications data’ (s. 21(4)): traffic data, usage, subscriber data
- Civil access
  - *Totalise plc v Motley Fool & Interactive Investor* (2001)
    - proposed EU enforcement directive, art. 9
  - *RIAA v Verizon Internet Services* (2003)

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## Concluding remarks

- Limits to anonymity?
  - identity as security, identity for compliance
  - comprehensive and effective controls on usage/access
- Further criminalisation?
  - deter wrongful acts, international harmonisation
  - over regulation

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