

Introduction

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In his 1992 novel *Snow Crash*, science fiction writer Neal Stephenson imagined the Metaverse. The Metaverse was a virtual world—a three-dimensional simulation of reality in cyberspace—where people lived, worked, and socialized. Since then programmers have used increasingly sophisticated graphical interfaces to create their own versions of the Metaverse. Although the development of these virtual worlds has been driven by the game industry, by now these worlds are used for far more than play, and soon they will be widely adopted as spaces for research, education, politics, and work. In the years to come our gateway to the Internet will probably look more like a video game and less like a book. Thus anyone who wants to understand the future of the Internet needs to understand virtual worlds.

Millions of people around the globe now play in these virtual or synthetic worlds. In fact, many of the 20 to 30 million regular participants now spend more time in virtual environments than they do at their real-world jobs or engaged with their real-world communities; according to one recent estimate, the average number of hours played is almost twenty-two per week. People who do not vote or engage in politics in real space eagerly do so in virtual spaces, drawn by the promise of new adventures, new identities, and the possibility of building new social universes.

People go to virtual spaces like Britannia or Norrath or Second Life to create characters, swap stories, build things, solve problems, pay taxes, enact rules, and break them. Some play in military virtual worlds like *America's Army*; in fact, the U.S. military now uses virtual worlds to simulate military situations and train and recruit real soldiers for battle. Virtual worlds have become active sites for commerce, where players trade in vir-

tual goods and services. On any given day between ten and twenty thousand virtual-world items are for sale on eBay. Participants go to virtual churches, join virtual societies, and engage in social activism and political protest.

The rich, persistent, interactive and graphical interfaces of virtual worlds stimulate social experimentation and encourage people to create new lives and to build vibrant economies and cultures. Virtual worlds are full of social cooperation and social conflict; they present all the problems of social order we find in real space and some that we do not. No wonder, then, that legal scholars have increasingly been drawn to study these worlds, both for the legal problems arising within them and for what these worlds might tell us about law and social order in real space.

This book brings together essays by some of the most important thinkers on law and virtual worlds. It grows out of the first annual State of Play Conference, held at New York Law School from November 13 to 15, 2003. The State of Play was organized by the Institute for Information Law and Policy at New York Law School and the Information Society Project at Yale Law School; it brought together leading legal scholars, game designers, and software industry professionals, as well as cognitive psychologists, communications experts, computer scientists, visual artists, and game players to explore the next frontier of cyberspace: the virtual world.

Greg Lastowka and Dan Hunter's introductory essay explains the basic terminology of virtual worlds and gives a brief history. They trace the origins of today's virtual worlds from the early text-based adventure games called MUDs (standing for either "multiuser dungeon" or "multiuser dimension") and MOOs ("MUD object oriented"—a reference to the style of programming used) to much larger and more interactive games with elaborate graphical interfaces. These games are sometimes called MORPGs (multiplayer online role-playing games) or MMORPGs (massively multiplayer online role-playing games).

The second section of the book, "Game Gods and Game Players," describes the basic conflicts that arise in virtual worlds between the players, the game owners, and the state. Private companies build and control virtual worlds for the entertainment of their subscribers. Players sign end-user license agreements (EULAs) that give them the right to play in the space in return for agreeing to the game owner's terms. As these games evolve into online societies, the question naturally arises whether and when real-world law should step in to protect the players from arbitrary decisions by the "game gods" and from allegedly unfair features of EULAs.

Should the law leave the regulation of virtual worlds largely to the market and to the artistic decisions and programming expertise of game owners or should legislatures and courts create new legal rules to constrain game owners?

The authors in this section take contrasting positions about the appropriate balance of rights between the players, game owners, and the state. Richard Bartle, one of the earliest virtual-world designers and cocreator of the first MUD, argues strongly for the rights of game designers in the virtual world. Playing a game means agreeing to abide by the rules the game designers set down. Designers, Bartle points out, have natural incentives to create worlds that people will want to play in, and so they should be given wide discretion in the way they organize a virtual world. Designers crucially maintain order in the game world, disciplining and even expelling players who make the game worse for everyone. Without the ability to recode the rules as the game designer chooses, a virtual world is “greatly diminished if not mortally wounded,” and the game designer’s incentives to design are skewed. Administrators of virtual worlds (often called “admins”) can and sometimes do willingly surrender their powers over the game to the players, Bartle explains, but “I am not happy for them to be taken away through ignorance by external forces.”

An opposing view comes from Raph Koster, creative director of Sony On-Line Entertainment, and the designer of *Star Wars Galaxies* and many other of the most popular massively multiplayer games. Koster argues that players deserve respect from the game designers and administrators as well as basic regulatory protections. Koster’s contribution to this volume is an expanded version of his famous essay “A Declaration of the Rights of Avatars,” a manifesto for the age of virtual worlds loosely based on the 1789 Declaration of the Rights of Man. Game administrators, Koster argues, should bind themselves to basic standards of decency and conduct, not only because it makes good business sense but because avatars are not merely fictional characters, but represent real people and their identities. “Some day,” Koster predicts, “there won’t be any [game] admin[istrator]s. Some day it’s gonna be your bank records and your grocery list and your credit report. . . . Some day it’s gonna be *Snow Crash* and *Neuromancer* and *Otherland* all wrapped up into one, and it may be a little harder to write to Customer Service.” “On the day that happens, I bet we’ll all wish we had a few more rights in the face of a very large, distributed server, anarchic, virtual world where it might be very *hard* to move to a different service provider.”

Ted Castronova is one of the first social scientists to have taken virtual-worlds seriously; he pioneered the study of virtual world economies, demonstrating that the GDP of Norrath, part of the virtual world *EverQuest*, was larger than that of several developing countries. Although Castronova gained fame by studying how players made real-world money from virtual economies, he argues that game spaces should be reserved for play and not for commodification. The point of virtual worlds, Castronova argues, is to allow the players to engage in fantasy. The law should safeguard the “Magic Circle” that allows them to do this. Castronova worries that the buying and selling of virtual goods using real-world money has turned virtual worlds into real-world economic zones, destroying the distinction between the play space and ordinary life. To prevent this, Castronova proposes the idea of “interration.” Just as the law has statutes of incorporation that allow for the creation of corporations—fictional legal persons with certain rights and obligations—the law should have special legal charters that he calls “statutes of interration.” These would recognize game spaces as fictional worlds with their own independent powers of regulation. Interrated worlds would be “closed” worlds. Goods and services may not be traded for real-world currency in these closed worlds and players who attempt to do so can be excluded from the game. In addition, closed worlds would be separate jurisdictions with rules of their own, into which real-world law would not enter: “Once a world is interrated under th[e] law whatever rights or obligations its internal government decrees (again, assuming they do not violate the terms of the charter itself) are sacrosanct there, and no user has a right to redress under any outside authority.”

By contrast, Jack Balkin argues that the law cannot be kept out of virtual worlds. As more and more people spend increasing amounts of time and energy there, they will inevitably call upon the state to protect their interests, and legislatures, administrative agencies, and courts will inevitably respond. Balkin believes that commercialization and commodification are the root causes of this trend. Because both game owners and players seek property protection for goods created in virtual worlds, they are effectively inviting the law in.

Balkin argues that the players’ freedom to play and the designers’ freedom to design are related to but not identical with the First Amendment rights of freedom of speech and association. He emphasizes the importance of protecting the free speech rights of both players and game designers from the state and balancing the free speech interests of players and

designers. Building on Castronova's notion of intertation, he argues that intertation statutes should allow game designers to choose among different kinds of regulatory schemes for virtual worlds, some which protect property rights and some which do not, some which secure public spaces for unfettered dissent and protest, and some which protect the free association rights of game designers. Whereas Castronova suggests that statutes of intertation should be used to keep the real law out, Balkin believes that the real point of statutes of intertation is to bring law in to protect free speech property and privacy rights.

Property rights are one of the most hotly debated topics about virtual worlds. Many view property as essential to the existence not only of virtual worlds, but of society more generally. The next section of essays, entitled "Property and Creativity in Virtual Worlds," asks about the proper role of real-world law in regulating property in virtual worlds. The very idea of property in virtual worlds raises a host of questions: Can there be crime or theft of property? What kind of governance of property should apply in virtual worlds? How should property protections be reshaped to serve the larger purposes of promoting social interaction and creativity in different kinds of virtual worlds? Although nominally about property, the essays in this section reflect a broader philosophical debate about the role of the law in producing social order and shaping social life.

Greg Lastowka and Dan Hunter's essay "Virtual Crime" considers whether the law should penalize the theft of virtual property that people invest time and energy in creating. What complicates the issue is that crime sometimes takes place in the context of the game, and may or may not be part of the game. Thus, Lastowka and Hunter worry that courts and legislatures will misunderstand the setting in which disputes about theft of virtual goods arise. They argue that the issue of virtual crime should be resolved by the EULA. "By concentrating the legal control of and rules regarding virtual property in their own hands, game owners and designers may essentially disarm many of the difficult legal issues stemming from inter-avatar property crime." "Some degree of confusion and category mistake would almost inevitably result from judicial attempts to interpret traditional criminal laws in order to police player behaviors in virtual worlds. Ironically, if we wish to preserve the benefits of virtual worlds as free and independent social experiments, it may be best if we keep the criminal law at a safe distance."

Julian Dibbell is a journalist of cyberspace, and the author of a famous *Village Voice* article, "A Rape in Cyberspace," that described a rape in a vir-

tual world and introduced many people to the special characteristics of these worlds. In his essay, “Owned!” Dibbell tells the story of Black Snow Interactive, a fly-by-night organization which hired Mexican nationals in Tijuana to play Mythic Entertainment’s *Dark Age of Camelot* around the clock to produce game currency that could be exchanged for dollars.

The best way to deal with property rights in virtual worlds, Dibbell argues, is to allow the game designer to control the rules of play and the existence or nonexistence of real-world property. When faced with exploits like Black Snow’s, Dibbell contends, “the end-user license agreement—that egregious tool of corporate tyranny over the defenseless, voiceless customer (or so I had painted it)—starts to look more like the place where a complicated give and take between designers and players is finally ratified, transformed from a murky power struggle into the legally binding rules of the game. The EULA starts to look less like a contract of adhesion, in other words, than like a social contract.” Indeed, Dibbell argues, “the feedback loop” between game players and game designers “is at best a crude approximation of democratic government—and for the sake of whatever fun inheres in these games is probably better left that way.”

While Dibbell hopes that the EULA might serve as an imperfect social contract that guarantees some decree of democratic accountability between players and game gods, James Grimmelmann views this social contract in far more Hobbesian terms. Grimmelmann sees disputes in virtual worlds as the rough and tumble of politics. “Every debate over the rules and every change to the software is political,” he explains. “When players talk about the rules, they are practicing politics.” Grimmelmann argues that there is no logical distinction between what he calls an “exploit,” taking advantage of a loophole in the game’s coding to contravene the spirit, if not the rules of the game, and a “feature” of the game that players discover and use to make the game more fun and to secure a competitive advantage. Grimmelmann believes the distinction between exploits and features will be decided, if at all, through the political negotiation between the various players and the game gods. Hence, Grimmelmann concludes that virtual worlds present many of the same problems that we see in real-world politics, including international politics. “Any difference [between real and virtual worlds] is illusory; these worlds may be virtual, but their politics are wholly real.”

Cory Ondrejka is one of the designers of *Second Life*, a popular virtual world that encourages its inhabitants to build and create new items. Inspired by Neal Stephenson’s vision of the Metaverse in *Snow Crash*,

Ondrejka argues in his contribution, “Escaping the Guided Cage: User-Created Content and Building the Metaverse,” that today’s technology finally allows people, for the first time, to construct the Metaverse for themselves. But Ondrejka argues that the Metaverse cannot succeed without players owning property rights in their own creations.

To this end, Ondrejka’s company, Linden Lab, has declined to exercise exclusive property rights in the digital works that players create in *Second Life*. Ondrejka argues that if players own rights to their own works, they will be more likely to create things, and by creating, become attached to the place that gives them tools to build their own creations. The Metaverse can happen if we let the players build it themselves rather than have game owners design it for them. By safeguarding players’ intellectual property rights and giving them the right to make money from their creations, game companies foster genuine creativity and the production of new objects and institutions, rather than mere crafting or tinkering. Give the players the ability to collaborate creatively, and let them make money from their efforts, Ondrejka argues, and they will homestead a new virtual frontier.

Yochai Benkler’s “There Is No Spoon” takes its title from a line from the movie *The Matrix*, in which the hero learns that everything that appears real is actually a computer simulation. Benkler argues that talk about property rights conceals a larger set of issues. The question is not whether players and game gods have rights or even whether virtual objects are property. Rather, the question is what kind of social relations a virtual world is trying to achieve. Property rights are only a means to realizing a particular set of social ends. For Benkler, “the interesting questions are, which approach will better foster creativity on this platform, give users greater creative autonomy, and create a more effective social network.” Benkler argues that the graphical rendering of virtual worlds is largely irrelevant to these questions because the graphical interface says little about the kind of social relations that the space is designed to achieve. For example, some virtual worlds will be largely for entertainment purposes or for buying and selling items. Others will be much closer to systems for the peer-production of knowledge like Wikipedia, an online collaboratively produced encyclopedia. To decide whether a virtual world like *Second Life* should adopt a particular set of intellectual property rights for players, Benkler argues, the designers must ask what kind of virtual world they want to be and what kinds of social relations they wish to foster.

Benkler’s argument raises a key issue implicit in many of the other essays in this book. Is there something about the rich graphical and inter-

active interfaces of virtual worlds that makes them importantly different from other forms of Internet activity? Do these interfaces help explain the sort of behavior we are likely to find within them? Or can virtual worlds produce any sort of social behavior and social ordering, depending on the designs of the game gods?

A key feature of virtual worlds is their flexibility about identity: They allow players to assume multiple identities and take on new social roles. Multiple identities and role playing are hardly unique to virtual worlds. Nevertheless, the graphical representation of avatars is one of virtual worlds' most salient characteristics, and it creates a wide range of interesting problems about identity and personal privacy. Virtual spaces encourage people to adopt new and multiple identities, which are often very different from their real-world identity. The rules of the space, controlled by the game gods, regulate what kinds of identities people can adopt, and whether they can keep their real-world identity hidden and separate from their online identities. The essays in the next section, "Privacy and Identity in Virtual Worlds" are concerned with these issues.

Tracy Spaight's essay, "Who Killed Miss Norway?" tells the fascinating story of a beauty pageant contestant who became a central part of the lives of her virtual-world friends until she was mysteriously killed in an automobile accident. Or was she? Spaight's story demonstrates vividly how virtual-world identities become as important to people as their real-world identities. Behind identity is the problem of trust; the players sympathized with Miss Norway because they trusted that she was who she said she was. The flip side of trust, however, is the possibility of deception and even betrayal, and virtual spaces make such deception particularly easy to accomplish. Not only do participants take on specially constructed identities in these virtual spaces, but the spaces themselves are generally understood to be places for play and make-believe. Nevertheless, play itself requires some degree of trust between the players, and that trust may often blossom into friendship, which players may regard as quite genuine and every bit as important to them as their friendships in real space. Spaight's compelling tale illuminates how virtual worlds generate and even require friendship and trust because of their complex social interactions, while at the same time undermining the consistency and authenticity of players' identities.

Susan Crawford's essay, "Who's in Charge of Who I Am?" focuses on how technology shapes the construction of human identity. Identity is central to human autonomy and self-fulfillment, but in virtual spaces

players may have multiple identities. These identities are subject to the ultimate authority of the game owner, who can limit the forms of identity that players can inhabit and who can even eliminate particular characters at will. Crawford argues that the law, which generally conceives of identity as unitary, is a poor instrument for regulating virtual worlds in which multiple identities coexist simultaneously. At the same time, she points out that in one respect identity in virtual worlds is not so different from everyday experience: In the real world people belong to multiple social groups and therefore inhabit multiple social roles that define their various identities. In the same fashion, Crawford argues, social groups can and should regulate player identities in virtual worlds. Social groups, Crawford argues, can often perform this task better than either game owners or real-world law.

Tal Zarsky's contribution points out that virtual worlds create special problems of privacy. Players not only may want to keep their online identities (and activities) secret in the real world, but they may also want to keep their real-world identities secret in their online communities, where they also have reputations built up over time. Game gods are omniscient; they can trace everything that avatars do inside the virtual world as well as collate this information with information about players' real-world identities. This allows game owners to violate players' privacy in both directions. Equally important, it allows them to create digital dossiers on players' preferences much more efficiently than in other Internet interactions that are spread over many different sites not controlled by a single entity. This, in turn, enables game owners to manipulate players more effectively in order to sell them goods and services.

The essays in the last section, "Virtual Worlds and Real-World Power" consider how virtual spaces can change the law and affect social relations in the real world. Caroline Bradley and Michael Froomkin argue that social scientists can use virtual spaces as test-beds to experiment with different sets of social and legal rules. Because virtual worlds feature complex social relationships, they are good platforms for trying out different legal rules and testing their consequences over time. In effect, virtual worlds allow a kind of cyberfederalism in which different communities can experiment with different rule sets. And because virtual worlds exist largely apart from real-world law, they can test legal rules prior to implementing them in real space.

David Johnson extends the theme of decentralization and experimentation. He argues that the graphical technologies originally developed for

virtual worlds allow new groups and new legal arrangements to be realized in the real world. For example, business organizations can exploit virtual-world interfaces to create new corporate forms. By exploiting the unique attributes of the computer interface, people can come together spontaneously to buy, sell, and distribute assets without incurring the costs of traditional corporate organization. Johnson believes that graphical interfaces offer increasing flexibility for forming and organizing social and business relationships. Instead of creating relatively permanent organizational structures, groups can form and organize themselves for specific purposes and then disband when their tasks are accomplished.

Beth Simone Noveck's essay "Democracy—The Video Game," also focuses on the special features of virtual-world technology. She agrees with Yochai Benkler that technology's impact on social relations is the key question, but in contrast to Benkler, she emphasizes that the tools through which people experience the Metaverse help determine what kind of social relations are possible there. Noveck argues that virtual-world interfaces, which render persons as avatars inhabiting simulated locales, allow people to form loosely knit social organizations and groups that can effectively wield power together. Unlike the first generation of World Wide Web technologies, virtual worlds reintroduce location, place, and space to Internet interactions; they allow participants to visualize themselves in embodied relationships to the communities to which they belong. By making it easier for people to see the groups to which they belong, virtual worlds make it easier for them to speak and act as a group. For this reason, virtual worlds, unlike the web-based Internet that preceded them, have a different and more powerful impact on collective action that can enhance the prospects for self-governance. Drawing repeated distinctions between older text-based cyberspace and new graphical virtual worlds, she argues that the latter have enormous untapped potential to shape real-world power and foster real-world democracy.