

The State of Play: Law, Games, and Virtual Worlds

Edited by Jack Balkin and Beth Simone Noveck
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The growth and development of virtual worlds presents unique challenges to the law. Questions abound concerning the extent of rights that both users of online worlds and administrators or developers are entitled to. Should a player gain property rights over their online persona (known as an avatar), or the items they collect or create within the world? Should commoditization of virtual world objects or avatars be allowed? Can traditional criminal statutes apply to in-world actions? As of yet, both courts and legislatures have not pried too deeply into virtual worlds, but when the time comes all sides must be properly informed about the potential consequences of their actions.

In *The State of Play*, editors Jack Balkin and Beth Simone Noveck collect articles from legal experts, game developers and policymakers in an effort to explore a range of issues affecting virtual worlds. The book grew out of the first State of Play conference held at the New York Law School in 2003. The essays collected in the book are designed to provide both a primer and glimpse into the future of virtual worlds. Concerns center on the applicability of current laws and their ability to adapt to situations unique to virtual worlds. As more and more people participate in virtual worlds, it will become increasingly important to establish a set of rules that both encourages the growth of virtual worlds and provides users sufficient protections.

The first section of the book, “Game Gods and Game Players,” explores the types and quality of interactions between game administrators or creators and game players. A dichotomy exists between the roles of these groups because the former is concerned about creating a commercially viable product while maintaining the integrity of their creation, whereas the latter is concerned with protecting assets accumulated during play while participating in their chosen manner.

Richard Bartle, in his essay “*Virtual Worldliness*,” describes the basic tenets associated with virtual world existence and the way in which the game’s rules are coded into the operating software. He focuses on three standards of virtual worlds that sustain the game conceit and worries about outside, uncomprehending interference with their operation.¹ Bartle also considers the role of commodification within virtual worlds and its potential to undermine the notion of escape associated with virtual worlds.

Raph Koster, in “*Declaring the Rights of Players*,” and Edward Castronova, in “*The Right to Play*,” discuss the rights of players within virtual worlds. Both authors initially focus on individuals participating in the game environment and the protections against abuse from game administrators that should be enjoyed. Both end up focusing upon game administrators, finding that laws or rules limiting their actions prove most effective. Castronova suggests the creation of “interration”² statutes for virtual worlds that mirror incorporation statutes. Interration would grant specific legal status to virtual worlds depending on the type of interreration chosen, defining the gaming experience.

¹ The three main standards identified by Bartle are 1) the powers assigned to game administrators within the code of the virtual world, 2) the freedom of administrators to change the rules of the game at any time and 3) the ability of administrators to change rules without warning or reason and only needing to explain the change afterwards. Richard Bartle, *Virtual Worldliness*, in *The State of Play: Law, Games, and Virtual Worlds* 31, 43 (Jack Balkin and Beth Simone Noveck eds., 2006).

² Edward Castronova, *The Right to Play*, in *The State of Play: Law, Games, and Virtual Worlds* 68, 68 (Jack Balkin and Beth Simone Noveck eds., 2006).

In "*Law and Liberty in Virtual Worlds*," Jack Balkin writes about the role of law and liberty within virtual worlds. He favors balancing the interests of both administrators and players. Each world has a different game conceit and one universal law cannot reflect the differing visions contained in the myriad games available. Recognition that all virtual worlds are not equal will be the key to enacting effective regulations.

The next section, "Property and Creativity in Virtual Worlds," looks at the application of traditional property law within virtual worlds. In "*Virtual Crime*," F. Gregory Lastowka and Dan Hunter discuss virtual crimes, concluding that real world criminal concepts are inapplicable because software controls virtual worlds. If the software permits a certain action, then it is not an "illegal" within the game. The types of virtual crimes Lastowka and Hunter identify as "real" are those where the players violate the End-User License Agreements (EULA), or where a perpetrator breaks into the game owners' computers.

Essays by Julian Dibbell, "*Owned! Intellectual Property in the Age of eBayers, Gold Farmers, and Other Enemies of the Virtual State*," and James Grimmelman, "*Virtual Power Politics*," look at the decisions of game administrators and the effect these decisions have on the game. Dibbell reconsidered an initial dislike of the parameter setting quality of EULAs due to their ability to ensure the integrity of the virtual world fantasy. Grimmelman examines the role of politics in virtual games, finding that mobilization of interests influence every decision. Both of these essays recognize that virtual worlds require constant change as well as adaptability in the rules governing them.

In "*Escaping the Gilded Cage*," Gary Ondrejka considers the drive of users to create objects within virtual worlds. Ondrejka argues that people have a fundamental

need to create new things and virtual worlds represent a unique place to give voice to this need. Increased user creation also relates to increased commodification of those items. Ondrejka argues that if virtual worlds hope to continue growing, the user licenses need to balance the creative interests of both users and administrators.

In “*There is No Spoon*,” Yochai Benkler argues that the dispute over property rights in virtual worlds is really about social relations. Attention should be centered on the structure of interactions between people and how a particular set of rules influences actions within each particular virtual world.

The “Privacy and Identity in Virtual Worlds” section discusses a player’s right to control all aspects of their online identity. In “*Who Killed Miss Norway*,” Tracy Spaight follows the tragic story of a popular player from a virtual world, only to discover the person probably was not who they claimed to be. Spaight says of virtual worlds, “the line between real life and fantasy is easily blurred,”³ allowing people to make what they want of virtual worlds by twisting normal concepts of identity.

In “*Who’s in Charge of Who I Am?*,” Susan Crawford looks at who can exert control over the continued existence of a player in a virtual world. Game administrators or owners necessarily have ultimate authority over the virtual worlds they create, determining who is allowed to participate. Crawford argues that while game controllers can modify the rules as they desire, but reputation and identity are powerful influences on administrators. Further, an individual’s virtual character needs to be connected to their real world persona to take full advantage of the opportunities in virtual worlds.

³ Tracy Spaight, *Who Killed Miss Norway?*, in *The State of Play: Law, Games, and Virtual Worlds* 189, 196 (Jack Balkin and Beth Simone Noveck eds., 2006).

Tal Zarsky looks at the flow of personal information from virtual worlds in “*Privacy and Data Collection in Virtual Worlds*.” Concerns arise from the potential exploitation of personal information by the government, other users, or game controllers, as more and more information is stored on-line.

The last section, “Virtual Worlds and Real-World Power,” explores the potential for virtual worlds to provide an arena for testing the applicability of new real-world laws as well as its impact on the functioning of real-world governments.

In “*Virtual Worlds, Real Rules*,” Caroline Bradley and A. Michael Froomkin identify virtual worlds as potential experimental arenas for new and proposed laws because users of virtual worlds have a sense of investment similar to the real world. However, Bradley and Froomkin caution that even though a proposed law may be effective in a virtual world, it may not be transplantable to the real world.

In “*The New Visual Literacy*,” David Johnson sees the opportunity to create new forms of organizations through virtual worlds. The visual nature of new virtual worlds promotes the coordination and structuring of action by easing the understanding of various relationships and development of different forms of interactions.

In “*Democracy – The Video Game*,” Beth Simone Noveck argues that virtual worlds can promote the development of true collective action. Information sharing and distribution is effortless, enabling the formation and development of interest groups to form around all issues. Additionally, virtual environment permit information to be shared more quickly as well as creating a common congregation point for people from not only across a country, but all over the world.

The “Game Gods and Game Players” grouping of essays provides an essential framework to understand the issues and topics discussed in the essays throughout the rest of the collection. The authors effectively present their ideas, revealing the extent of the uncertainty in applying current laws or rules to virtual worlds. The game player rights essays follow an unexpected path because they purport to focus upon game players, but ultimately conclude that game owners should be the subject of regulations. Balkin’s balancing of these viewpoints in the last essay most likely represents the most realistic approach since laws will function best when overall interaction is considered.

The ensuing examination of property rights within virtual worlds actually explores the ability to encourage and limit user creativity. The indication that game owners are primarily concerned with protecting their investment, a valid pursuit, should be balanced against the investment of users. Ondrejka persuasively explains that users will keep pushing the boundaries of their rights and will likely lose interest in continued participation without the right to exercise control over their in-world creations. Benkler’s section concluding essay raises a question about the fundamental purpose of virtual worlds, suggesting that property rights are not actually a concern at all. Given that virtual worlds are just that, the argument that they are primarily social spaces is persuasive, at least until some form of a majority is actively participating.

Benkler’s essay provides a smooth transition into the next section that includes thoughtful interpretations of the development and maintenance of personas within virtual worlds. Participants are free to present themselves in whatever fashion they choose and Spaight identifies both the positives and negatives of this feature. In conjunction with Crawford’s essay, one of the major attractions of virtual worlds is explained, as well as

the difficulty of applying current laws to virtual worlds. Different schemas will need to be developed to accurately connect a person to their avatar when necessary, while still protecting a person's right to privacy and self-determination in the virtual world. Identity in virtual world is not the same as in the real world, and it will be necessary to construct new concepts of identity to protect the unique and appealing aspects of virtual worlds.

The last section's exploration of the potential for virtual worlds to enhance or test real world power is provocative. Experimenting with proposed laws in controlled environments or observing effects in a virtual world mimicking the real offers the chance to avoid unanticipated consequences of laws. Bradley and Froomkin accurately caution that each setting is different though and it is impossible to anticipate everything. The more relevant consideration is the impact of virtual worlds on real world power dynamics. The suggestion of virtual world organizing of vast communities of people could both empower people and subvert real world institutions. Both Johnson and Noveck do not focus enough upon the potentially negative effects of increasing civic participation or engagement solely through virtual worlds. Reliance upon virtual worlds could remove the personal interaction of government and enable the most technologically savvy people to exert the most control.

The essays in *The State of Play* identify both areas of potential benefit and concern associated with virtual worlds. Current law cannot be effectively applied to virtual worlds and laws designed to cover the new interactions possible in virtual worlds are necessary. Increased understanding of virtual spaces is essential to their continued development and viability. Taken together, the essays educate the reader about the issues surrounding virtual worlds and the coming challenges.