Planes of Power: EverQuest as Text, Game and Community

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Abstract:

This article describes EverQuest as a fictive text, a computer game, and an online community and explains how these three distinct frameworks lead to different legal regulatory modalities. In combining elements of fiction, game, and community in an integrated framework, EverQuest challenges a prospective legal regulator to weigh policy considerations in determining how best to respond to an object and social practice that entails the interplay of various authorial, strategic, and community elements. Ultimately, the question of formulating an optimal regime of legal regulation for virtual worlds like Norrath must be seen as a potentially new question to be addressed by the political process.

Keywords: EverQuest, law, legal, interpretation, MMORPG

Introduction

The back of an EverQuest strategy guide states: ‘You will rule the Planes of Power’ (Cassady & McBride 2002). This guide, the Prima Official Strategy Guide, is licensed as an official™ EverQuest guide by Sony Online Entertainment (SOE™), EverQuest™s corporate owner, and it places legal restrictions on player behaviour within Norrath by virtue of a blend of intellectual property rights and contract. So, actually, it would seem that SOE (and not you) will rule the Planes of Power.

What might it mean to ‘rule the Planes of Power’? It is often unclear whether statements about EverQuest refer to the fiction of the world or refer to ‘real life™. Scholarship of the new media, and of virtual worlds in particular, often points to the way in which EverQuest is liminal - a space that floats between fiction, game, and community (Craft 2004: 70; Klapstup 2003b; Taylor 2006). This gives rise to the common use of the acronym ‘IRL’ to designate player statements as referring to conditions ‘in real life™ (Lastowka & Hunter 2004a: 64-65). With regard to your rule of the Planes of Power, SOE probably promises you a rule in fiction, where it presumably wishes to continue its rule IRL.

This essay examines this tension between interpretive frames that read EverQuest as a text, a game or a community. It also discusses how these frameworks may have implications for legal regulation. As popular participation in games like EverQuest grows, social conflicts are arising in Norrath and other virtual worlds like it. These conflicts are giving rise to litigation (Lastowka & Hunter 2004b; Dougherty & Lastowka 2008). The law is only beginning to come to terms with Norrath and other virtual worlds like it. In this process, we may see the law approach virtual worlds as texts, games, or communities, or some blend of the three. EverQuest has been read critically pursuant to each framework. Different legal consequences emerge from these different approaches.

I should forewarn the reader that this essay, like the other essays in this issue, is about EverQuest rather than about virtual worlds generally. As a practical matter, the largest targets of legal policy at the present date (2009) are virtual worlds other than EverQuest; including like World of Warcraft; Second Life, Club Penguin, Maple Story, and many others. However, EverQuest was, in many ways, the inflection point in the path of the modern MMORPG™s development and deserves attention for that reason. While this discussion focuses primarily on EverQuest, a discussion of EverQuest is clearly pertinent to the many other virtual worlds in existence today.

A Brief Introduction to EverQuest

On March 16 1999, the game of EverQuest was launched as retail software coupled with a monthly subscription service. While EverQuest was not the first well-known MMORPG, it soon came to dominate the market. At its peak, roughly half a million subscribers were paying over US$10 a month to maintain gaming accounts in EverQuest™s Norrath, producing substantial revenues for SOE, the game™s legal owner. The financial success of EverQuest largely gave birth to the MMORPG genre (Bartle 2004a: 25).

The influence of EverQuest over the MMORPG genre is hard to overstate: almost all popular MMORPGs today borrow much of their structure and formula from EverQuest, including particular terminology that was coined or at least popularised in EverQuest. Yet while EverQuest is generally regarded as the most important early MMORPG, its success came primarily from timing and polish, not from novelty. Indeed, the success of EverQuest may be in part due to the fact that is lacked much novelty. In its fiction, EverQuest was substantially derivative of the
mythos of fantasy literature (epitomised by the works of J.R.R. Tolkien). In its game structure, EverQuest was substantially derivative of social text-based games called MUDs (and Diku-MUDs in particular) (Bartle 2004a: 25). Diku-MUDs were in turn substantially derivative of the role-playing game Dungeons & Dragons (Morrow 2003: 225). If players of EverQuest were familiar with any of these genres (and most probably were), they found Norrath a familiar and predictable fantasy world, with a path of gameplay based on the same combat and advancement progressions present in a host of earlier games.

Norrath as Text

The game of EverQuest takes place in the fantasy world of Norrath. Though many have emphasised the differences of EverQuest from conventional texts, it is worth noting that Norrath, like a book or a film, does indeed present a text that can be divorced from its players. As Timothy Burke has stated: "Virtual worlds have a real initial condition, a moment where they are uninhabited by agents" (2005: 16). The fictional world of Norrath is a database and set of instructions containing creatures, cities, and animations that might be laid out as a mosaic of components to be critically analyzed. The text of Norrath contains narratives as well: many quests written within the game are scripted by the game’s designer and unlocked sequentially by the players. When pieced together, quests contribute to an imagined history of Norrath. The same is true for other contemporary MMORPGs (Huber 2005).

The pre-player text of EverQuest resulted from the collaborative efforts of many game designers and developers, initially led by Brad McQuaid and Steve Clover (Marks 2003: 37-41). Collaboratively, the design team wove together pieces of data to trigger images, sounds, and words that would be displayed on the player’s screen in response to player actions.

The pre-player text of Norrath can be seen as depicting a fictional software society. If we consider prior fantasy worlds in film and fiction, we could easily seek and find fictional rulers of such fantastic societies. Indeed, these characters generally occupy key roles in fantasy narratives. For instance, the plot of Tolkien’s Lord of the Rings features protagonists at war with the malevolent magical dark lord Sauron who rules the territory of Mordor. Likewise, in the first three Star Wars movies, the protagonists are at war with the Empire, represented by Lord Darth Vader. So if fictional societies have presented us with fictional governments and fictional rebellions, then who rules the fiction of Norrath? Like the fantastic worlds depicted in The Lord of the Rings or Star Wars, the player-less text of Norrath presents a world at war. Though individual areas of the map of Norrath are controlled, there is no overall ruler of Norrath, but instead an ongoing struggle for control. The player enters Norrath in medias res. Yet while Norrath shares something with Star Wars or The Lord of the Rings, Norrath was not constructed to produce pleasure in the form of a narrative, at least not as a conventional narrative produces pleasure. While The Lord of the Rings and Star Wars have endings, the war in Norrath never ends. Given Sony Online Entertainment’s financial interest in maintaining paying subscribers, the notion of ending Norrath’s story for any particular player, much less for EverQuest as a whole, is obviously ill-advised. Instead, Norrath is structured as a world-ficiton that will always lack an ending. The text of EverQuest is thus a backdrop for a society at the pleasurable play of conflict and camaraderie. The fiche politics of Norrath are only present to provide a pleasing context for these player activities, which consist mainly of combating monsters, completing quests, and socialising with other players.

It should also be noted that, compared to film and literature, the social fiction in Norrath is as thin as a Potemkin village. In other media, it is possible to depict society as a seamless background. The society on film in Tatooine is just as real as the fictional character of Luke Skywalker, and the Shire is made of the same stuff as Frodo. In Norrath, an attempt at a social milieu is made by the designers, but the technical limitations of computer simulation and the broad range of player affordances make Norrath’s society feel two-dimensional at best. The players in Norrath seem real (indeed they are real), but the social text is clearly part of the stage. For instance, while there are representations of cities and societies in Norrath, the fictional portrayals of these is so stripped down that they verge on the symbolic. If one presumes that there should be more than fifty people in a city, then the NPCs in most cities of Norrath serve as tokens of families and societies that are not represented but must be imagined. The standard innkeepers of Norrath are rooted in fixed locations, spouting a limited number of pre-programmed snippets of dialogue. Guards patrol eternally. A simulation of a more complex Norrathian society, where, for example, guard sleep and innkeepers move about, would certainly be more satisfying for players. However limitations on bandwidth and processing power make this possibility completely impracticable.

So a greater fictive Norrathian society is regularly invoked, but largely as an appeal to the player’s power of imagination.

Norrath as Cybertext

In addition to interpreting Norrath as a pre-player text, we can also interpret it as a new type of text: a textual machine or cybertext. Espen Aarseth, in his book Cybertext (1997), argued that computer games might be analyzed as a peculiar form of navigable literature, understood as inherently linked with the participatory labour (or play) of the reader. The ergodic reader/player is essential to all computer games by their nature: to play a game, one must manipulate an interface. Without player participation, the text of the game cannot be explored. Ultimately, the player’s manipulation of the interface produces a stream of symbols that, Aarseth notes, might be framed as similar to conventional
audiovisual texts (1997: 20-1; 26-7). In Cybertext, Aarseth creates a formal framework for appreciating the structural differences between text and cybertexts, a difference which he feels is generally misunderstood by those who attempt to read cybertexts as analogous to past media. Of particular note is Aarsethâ€™s discussion of MUDs, which appears conflicted (quite understandably) as to whether MUDs are best defined as games, texts, or communities (Craft 2005: 180-1). Torill Mortensen, who has carried forward the cyberextural investigations of MUDs, has likewise asserted that they place the putative â€œreaderâ€™ in a position that â€œis dangerously close to authorshipâ€™ (Mortensen 2002). The arguments of Aarseth and Mortensen, though targeted mostly at player production of MUDs, seem clearly pertinent to the text of EverQuest.

The law has also struggled to determine whether players are, in some sense, the â€œauthorsâ€™ of computer games. In a 1982 case before the United States Court of Appeals for the Third Circuit, Williams Electronics v. Arctic International, the plaintiffs claimed that the defendants had violated copyright law by reproducing and distributing the arcade game Defender. The defendant attempted to rebut this claim by arguing that â€œthe player's participation withdraws the game's audiovisual work from copyright eligibility because there is no set or fixed performance and the player becomes a co-author of what appears on the screenâ€™. In other words, the defendant in the case claimed that the creator of the gameâ€™s software text collaborated in the authorial process with the players of the game. Hence, it would follow that the text of Defender, in the eyes of copyright law, should be seen not as its player-less text, but as an amalgam of the underlying code and the playerâ€™s active participation in the performance of the game. Each player would be seen as creating his or her unique text of the Defender story through the process of play - because what could the game be apart from its player performance? The court rejected this argument, but only in a qualified way, noting that the playerâ€™s control was not all-encompassing, but was instead limited to certain elements of the game. Because the defendant had copied elements which the player did not control, the argument did not preclude the possibility of infringement of that portion of the game.

The theories of Aarseth and Mortensen, which seem not very far from the claims made by the defense lawyer in Williams Electronic, are only recently being applied to MMORPGs in the style of EverQuest. Jason Craft, in his doctoral thesis Fiction Networks: The Emergence of Proprietary, Persistent, Large-Scale Popular Fictions, focuses on how both comic books and MMORPGs create â€œfiction networksâ€™ (Craft 2005: 12). Craft describes these as proprietary texts â€œcomposed of the large-scale conglomeration of other textsâ€™ (ibid.). Craftâ€™s work is congruent, in many ways, with Lisbeth Klastrupâ€™s doctoral thesis, Toward a Poetics of Virtual Worlds, which contains an extended discussion of EverQuest. Rather than focus on the macro-level of the fictive network, Klastrup focuses primarily on the micro-level of the playerâ€™s power of â€œtellabilityâ€™ within virtual worlds (Craft 2005: 185-6; Klastrup 2003b: 14). Borrowing from the work of Marie Laure-Ryan (see, for example, Ryan 2001: 259), Klastrup notes how the experience of playing through the text of EverQuest often makes for â€œtellable eventsâ€™ and she thus posits that Norrath amounts to props and â€œa stage for an experience of a shared lived worldâ€™ (Klastrup 2003a: 103). In Klastrupâ€™s formulation, players use EverQuest to both perform and later recount tellable stories that merge their game actions with the narrative possibilities that EverQuest provides. (ibid.).

It is an oversimplification to be sure (and perhaps a dangerous one), but one might analogise the virtual props and locations provided by EverQuest to a childâ€™s dollhouse or set of blocks. The point is that EverQuest provides a form of artistic creativity to players, but it is the playerâ€™s engagement in manipulating that work that creates the greater pleasure. So while EverQuest is certainly something that can be viewed as authorial without its players, it is much more than that when processed and reformulated by its player community. EverQuest players, even highly strategy-minded â€œpower gamersâ€™ seem to enjoy recounting memorable game experiences to their friends and co-players (Taylor 2006). These narratives are importantly embedded in a greater sense of EverQuest as a game world. Like diaries and home videos, the narratives probably have limited appeal for those who are not featured in the story. But some personal stories are significant to every player and are united by a shared set of Norrathian components. The primary text of EverQuest thus becomes a constellation of personal narrative unified by their basis in a shared world (Craft 2005; Klastrup 2003b).

**Norrath as Strategic Text**

The game of Norrath further complicates the structure of its text. Insofar as EverQuest requires player participation in its textual process, it also guides, via its strategic elements, the way player narrative is socially constructed. Perhaps it is a bit strange to discuss EverQuestâ€™s strategic dimension as an aspect of its text, but as Eric Hayot and Ted Wesp have pointed out, it is impossible (or at least inadvisable) to divorce the fiction of EverQuest from its function in game strategy (Hayot & Wesp 2004b). Player avatars and NPCs in Norrath are fictively framed as representatives of particular races and classes. This fictive frame is conjoned with a strategic dimension, equally a structure that is part of the designerâ€™s authorial intent, that both constrains the playerâ€™s interaction with the text and provides meaning to the text as experienced (ibid.).

One important example of fictive/strategic interplay is Norrathâ€™s factional system. While the factional system has decreased in importance throughout EverQuestâ€™s history, I will use it simply to demonstrate how the fiction of politics, combined with their expression through gameplay, inevitably shapes what
is ultimately ‘tellable’ by players about Norrath. The original designers of Norrath felt that if player conflicts were structured as simply pitting ‘good’ computer opponents against ‘evil’ computer opponents (like the fictional politics in Star Wars and The Lord of the Rings), the game play in EverQuest would create a world that was far too simplistic. Instead, the text of Norrath was structured in pursuit of complexity, to draw the player into various racial, religious, and factional allegiances and conflicts, moving beyond good and evil into something more closely resembling conventional politics (Marks 2003: 41). Players thus may choose to play EverQuest on the side of good or evil groups, and owe loyalties to various races, religions, and professional guilds. For instance, fairly early in Norrath’s history, at the time of the Runs of Kunark, there were 13 different ‘racial’ identities player could choose from, 17 different deities to whom players could swear their devotion, and over 100 known factional alliances (Tyler 2000; Hayot & Wesp 2004a: 19-22). Norrath’s topology is contested and overlain with these divisions. Racial subgroups, at least in the early years of the game, generally started in close proximity to their racial ‘home’ and were at serious risk of game death (inconvenient, but not permanent) if they ventured into an opposing territory. (Hayot and Wesp 2004a: 19-22; Sony 2002b). For instance, certain races, such as the Dark Elves and the lizard-like Ixkar, generally started at their designated ‘evil’ cities and were ‘killed on sight’ by the software NPC’s and mobs of ‘good’ cities (Tyler 2001: 49, 55).

When we appreciate that the virtual world of Norrath is a text - a field of symbols and structures that precede its interaction with an audience and also guide the manner in which an audience uses the software, we must also come to appreciate that Norrath is something more than a platform for community formation and communication. (Benniker 2004; Balkin 2004). In EverQuest, and other MMORPGs, community is grounded in a fiction that precedes and shapes it. It is impossible to separate the community of EverQuest from the fiction of Norrath that structures identity and meaning. Players speaking of EverQuest inevitably talk of locations, creatures, and stories, all of which were originally embedded in the game as texts, objects, and strategies. Even when players speak of themselves within the game, they must speak of a race, a class, and other aspects of fictional identity that the designers hard-coded into possibilities of the text of Norrath. Player creativity and intermediation may add a very important dimension to the text of Norrath, but the game and the community never leave the text behind (Lastowka & Hunter 2004a: 59-63).

Law and the Text of Norrath

Law often limits permissible speech, whether that speech is the text of Norrath or a conversation on a real life sidewalk. For instance, in the United States, freedom of speech is restricted in many ways. Distribution of speech that is obscene may be prohibited by law. Revealing trade secrets and government secrets can be punished by civil and criminal laws. Speech that promotes violence and crime may also be restricted. The reception of child pornography is criminally prohibited. There are also legal prohibitions on the spread of false information (counterfeiting, defamation, and product disparagement) and on the unlicensed appropriation of another’s creative expression (copyright). Speech is free, but with many limits.

These limits apply fully to Norrath as well. Copyright hindered SOE in its creation of Norrath by constraining what Norrath could plausibly depict. If SOE’s original conception of Norrath, for instance, had very closely resembled the universes of Star Wars or The Lord of the Rings, it would have been presumptively in violation of intellectual property law. Only at the suffrage of the appropriate copyright and trademark owners would Norrath have been allowed to exist at all. On the whole, however, while various forms of law limit permissible speech, framing Norrath as a text is an approach that accords the greatest power to Norrath’s designers. Indeed, the copyright exception to freedom of speech is something that is fairly essential to Sony’s current ‘rule’ of Norrath. While players might create their own copies of SOE’s software, this practice would infringe Sony’s copyright in the game. Copyright therefore probably benefits SOE as a company much more than it hinders SOE.

Also, if we frame Norrath as simply fiction (or a new cyber textual flavour of fiction) this will likely allow the designers of Norrath to structure EverQuest with a great degree of deference from the state. The First Amendment of the United States Constitution expressly prohibits the state from imposing restraints on speech. If Norrath is primarily a text, it is a form of speech. Depending on one’s view of the proper policy outcomes, privileging Norrath as speech over Norrath as game or community may be desirable. If the policy goal sought is the autonomy and independence of virtual environments from legal regulation, framing Norrath as a text is the best way to accomplish this. However, there are other approaches available as well.

Norrath as Game

Experienced players of EverQuest who recount their group raids against extremely powerful mobs will often describe these activities as social and strategic and involving. It is hard, though, to place a designer-authored text at their centre. The typical large-scale EverQuest raid consists of waiting an hour or so for a group to finally assemble and organise (proper etiquette is to arrive 15 minutes early), followed by the raid itself, which consists of a concentrated attempt by the raid leaders to maintain group strategies in the face of confusion, adversity, and player inexperience. This social activity is textually embedded and follows a certain predictable sequence, but the EverQuest raid and its manner of enjoyment is clearly not analogous to War & Peace (Aarseth 1997: 3).
Games, whatever their textual qualities, are pleasurable differently. A player does not generally run a marathon or step onto a tennis court primarily motivated by an expectation that the game performance will produce a narrative or textual variety of pleasure. As Torill Mortensen notes: â€œTo study logs from the game as texts afterwards is like studying a description of an event rather than being present at the eventâ€™ (Mortensen 2002).

Games, as many game designers and scholars have noted, operate along dimensions which are in tension with traditional narrative (Myers 2003a; Myers 2003b; Juul 2001; Juul 2003: 137-44). EverQuest, being a game, requires the player to perform and acquire interactive mastery over an environment that resists the playerâ€™s will to control it - conventional narrative texts do not force anything analogous (Aarseth 1997: 4). A gameâ€™s fictive world supports and lends meaning to, but does not create, its process of play (Myers 2003a). David Myers frames the play of computer games in his book The Nature of Computer Games as a fundamentally semiotic process (Myers 2003b). The player is pitted against an environment which resists his or her mastery, but allows affordances in its interface. Through the process of play, the player solves the puzzle by eventually mastering the gameâ€™s interface to produce the desired objective. In other words, the player of a computer game manipulates signs in a struggle to achieve a representational possibility.

If one frames Norrath as a game, the question â€œWho will rule the Planes of Power?â€™ might be framed as a question of who will make the rules: who will provide the rules of game play by which game mastery is achieved? This approach accords with the theories of Johan Huizinga and Roger Callois. Both Huizinga and Callois viewed play as primarily about rules - clear and fixed rules that are invoked to structure permissible and impermissible player actions directed toward a contested outcome. They also emphasised the social separateness of these types of play orderings. As Huizinga noted, play â€œproceeds within its own proper boundaries of time and space according to fixed rules and in an orderly mannerâ€™ (1950: 13). Callois also emphasised the ruled nature of play, which he regarded as both liberating, isolating, and curiously wasteful (Callois 1958: 6-9; Juul 2003).

This pronounced isolation of play from a conventional social order is probably part of playâ€™s appeal. Most games are structured as meritocracies of a sort, with each playerâ€™s ability to contract and exchange suspended to enable the pursuit of â€œfairâ€ competition. For instance, the rules of play generally award victory to the player with the most points, yet the rules do not clearly define what constitutes a legitimate way of gaining points. This type of rule breaking is described variously as cheating, exploiting, duping, or hacking. When players engage in behaviors that â€œbreakâ€ the gameâ€™s rules they may also subject themselves to legal liability. As a legal matter, under laws prohibiting computer trespass, unauthorised player access to EverQuestâ€™s code level may even amount to a crime against SOE under existing laws. Still, players often attempt to exploit game software, and these types of behaviors have long been part of the history of online communities (see Dibbell 1998; Morningstar & Farmer 1990).

In addition to the rules imposed by code, SOE promulgates written â€œrulesâ€™ by which the game of EverQuest must be played. These rules serve to clarify what is and what is not a permissible manipulation of the gameâ€™s software affordances. These written rules are set out in several documents, most notably the EverQuest End-User License Agreement (â€œEULAâ€™) and the Terms of Service (â€œTOSâ€™). These documents are essentially contracts of adhesion that must be accepted in order for player to even experience Norrath (since the operation of the game software is, when unlicensed, an act of copyright infringement).

Such agreements are drafted, arguably, to limit the rights of players. The license agreement is regularly revised by SOE, at its discretion, and contains numerous blanket statements that declare SOEâ€™s absolute control, such as the following: â€œWe may terminate [your account] â€œwithout noticeâ€ upon gameplay, chat or any player activity whatsoever which we, in our sole discretion, determine is inappropriateâ€. Essentially, according to the EverQuest EULA, the rules of
For the most part, as David Myers notes, &quot;MMO designs &quot; are devoted to promoting &quot;good&quot; play: supportive, cooperative, and socially beneficial. Those features that do the opposite (i.e., provide for competitive, disruptive, and/or socially isolating play) are not as often included, emphasised, or promoted in the game (Myers 2005). Still, there are notable instances where the community of players and SOE diverge in their interpretations of rule enforcement.

In one well-known incident, SOE terminated the account of a player who role-played a Dark Elf, a race of Norrath that is fictionally perhaps the most &quot;evil&quot; of the various races. On a website not owned by SOE, the player reportedly wrote works of sexual fiction featuring young Dark Elves. When this was brought to the attention of Sony Online, the player's account was terminated (see Marks 2003).

From these accounts, it may seem that SOE rules Norrath with an iron hand. However, while this formal control exists at law, day-to-day enforcement of rules and monitoring of players is a business cost that SOE would prefer to avoid. The game of *EverQuest* features hundreds of thousands of players, and only a handful of referees who respond to complaints of rule violations.

So the game play in Norrath is, in practice, significantly controlled by individual players and social groups (who take the form of &quot;guilds&quot;). Community policing in *EverQuest* is done largely by players. Strategically, a positive reputation and social connections with other players is almost required for player advancement. This social interdependence was an intentional part of *EverQuest*’s game design. Thus, in order to advance, one must join a group, and in order to join a group, one must obey the various norms of the culture(s) of *EverQuest*.

It is perhaps not surprising that emergent player rules in *EverQuest* generally seem reasonable and reinforcing of popular social norms, and will often evince the same values as the meritocratic game structure. One is not permitted to reap where one has not sown (i.e., prohibitions on &quot;kill stealing&quot; and &quot;ninja-looting&quot;), one is expected to share scarce resources equitably (i.e., prohibitions on &quot;camping&quot;), and one is expected to avoid negligently endangering other players (i.e., prohibitions on &quot;training&quot;). These rules will only become apparent in the breach, and are often the subject of vigorous debate (see Taylor 2006), but they are ultimately not exceptionally creative or unusual rules when compared to their &quot;real life&quot; counterparts. They are largely attempts among players faced with a source of social conflict to utilise common norms of play and &quot;fairness&quot; highly similar to those found offline (such as the norms with regard to capture and &quot;ownership&quot; of parking spaces).

**Regulating the Game of Norrath**

It is worth noting that in terms of their dependence on formality, enforcement, and punishment, the rules of play are analogous to law. Indeed, Huizinga noted the similarities between play and law (Huizinga 1950: 76-88). The difference between game rules and laws is often framed as one of relative seriousness and social consequence. Play is associated with a rhetoric of frivolity (Sutton-Smith 1997: 201-13). While play and law share a mutual basis in rules structuring permissible and impermissible social action, play is always contingent on the suspension of standard forms of social ordering, where law generally refuses, formally, to suspend its application to society. This is what differentiates the game rule from the legal rule and makes games inherently *inferior* social practices (see Sutton-Smith 1997).

How might law approach the game rules of Norrath? Perhaps surprisingly, the law seems to recognise the kinship between its own rules and the rules of play. This seems to be the only explanation for the fact that rules of play are, at times, awarded substantial deference by the law. For instance, if one person jumps upon another and breaks the victim’s bones, this is the type of conduct might lead to a jail sentence. However, an injured player on a football field is largely without recourse. There appears to be a recognised implied social contract in play that often will trump conventional expectations about the scope of the social duty to, for instance, refrain from intentionally injuring others.

Law defers to game ordering in other ways as well. For instance, it would seem absurd to most people to legally challenge the ruling of a high school football referee, even where that decision could conceivably affect very real social and financial interests of players (related, for instance, to college scholarships). Again, the law accords with this intuition, though it is not fully clear, from a theoretical perspective, what is animating this deference. As Paul Berman has noted the &quot;lawmaking authority over sports events is generally left to non-state entities (such as referees) whose decisions are not usually reviewable except within the system established by the sports authority or league&quot; (Berman 2005: 506).

Numerous states have additionally enacted, affirmatively, statutes that limit the liability of referees and sports officials for making negligent decisions. To some extent, this demonstrates even more deference to the autonomy and social separateness of the playing field.

However, while these state statutes suggest that society wishes to grant a general structural autonomy to game play, it also is clear that society will limit the autonomy of game ordering. There is an inherent tension, therefore, between the state’s deference to game ordering and the authority of law. This is nicely summarised by John Barnes:
rules governing matters pertinent only to the insular society. Legal
ordering made salient by an
the policy frame of a text
How might
MUDs, such as Julian
social practices of
based communities. Taylor provides an extended
geographically grounded communities or even
permeated by game-fictional structures and practices: a far
investigations also reveal that the
community
EverQuest
The most thorough discussion of the
community,
understanding what it
implications of this community nature
worlds allow for the existence of technologically mediated communities
without
'SOE seems almost defensive
Indeed, on the second page of the
rules. In defense of playâ€™s inherent autonomy, Scalia asked:
Why cannot the PGA TOUR, if it wishes, promote a new game,
with distinctive rulesâ€”if members of the public do not like the
new rules... they can withdraw their patronage. But the rules are
the rules. They are (as in all games) entirely arbitrary...

How does Martin apply to Norrath? It is hard to know what the Supreme Court
would say about Norrath, but the case does seem to suggest that the law is
prepared to permit a substantial degree of private ordering in game rules that are
broadly known and accepted by those who play the game. If game rules so
dictate, it is clear that in many games, fortunes can be lost, players can cause
significant harm to each other, and perhaps even Congressional statutes can be
made inapplicable. However, even where written rules of play exist, the autonomy
of game â€œownersâ€ to form rules that run against greater social interests may be
substantially curtailed. As one can tell from the Martin decision, there is no firm
gleam that protects the orderings of game play from the power of law to shape
them. While the Court believed that Congress had intended to grant deference to
essential game orderings, it did not state that Congress was required to grant that
deference. The primary point we might draw from Martin is that framing Norrath
as a game, not a text, would presumably shift the relative allocation of power from
SOE toward the state. When Norrath is framed as text and a form of intellectual
property, it has a wide discretion in how it â€œspeaksâ€ through the fiction and
the strategic structure of Norrath. If Norrath is viewed as a game (like golf), the
law seems to minimize its expressive function. While game rules are granted
some legal deference, they are not granted the legal deference accorded to texts.

Norrath as Community

Finally, we can turn to the third frame for considering EverQuest: as a community.
EverQuest is, in significant part, created and sustained by the community of its
players. Not surprisingly, statements from the developers themselves also
recognize the centrality of community to the game (Marks 2003: 94). Brad
McQuaid, one of EverQuestâ€™s lead designers, has explained that EverQuest,
like baseball or basketball, includes mechanics designed to force players to
interact socially in order to advance strategic goals.

Indeed, on the second page of the â€œNew Userâ€™s Guideâ€ to EverQuest, SOE seems almost defensive about the communal nature of its game, stating:
â€œEverQuest has been hassed for being a game thatâ€™s impossible to play
without grouping with other playersâ€ (Sony 2002a: 2). The belief that virtual
worlds allow for the existence of technologically mediated communities is, without
a doubt, the source of their great appeal for many scholars from various academic
disciplines (see Bartle 2004a). Among them are those who are interested in the
implications of this community nature for legal regulation (Burke 2004; Dibbell
understanding what it means (as a legal matter) to claim that EverQuest is a
community, as opposed to a textual work or a game practice, is not altogether
clear.

The most thorough discussion of the community of EverQuest is T. L. Taylorâ€™s
ethnography (Taylor 2006). Taylorâ€™s work suggests that popular stereotypes of
EverQuest players as solitary teenagers are simply wrong, and that claims of
community within EverQuest are often under-valued. However, Taylorâ€™s
investigations also reveal that the EverQuest community is a community
permeated by game-fictional structures and practices: a far different creature than
geographically grounded communities or even â€œconventionalâ€ Internet-
based communities. Taylor provides an extended depiction of the community and
social practices of EverQuest, recalling prior extended treatments of much smaller
MUDs, such as Julian Dibbellâ€™s investigation of LambdaMOO (1998) or Daniel
Pargmanâ€™s description of SvenskMUD (2000).

How might EverQuest as a community provide a policy frame that diverges from
the policy frame of a text or a game? The notion of community in law is often
made salient by an accompanying claim to the legitimacy of regimes of communal
ordering and an associated degree of legal autonomy from default â€œoutsiderâ€™s
rules governing matters pertinent only to the insular society. Legal ordering itself is
jurisdictional autonomy is required. At least three commentators on virtual defense based upon an untested theory of jurisdiction cannot safely desirability Norrath will likely players. In other words, such autonomy will likely be raised functional ‘autonomy’ for Norrathian The tension between developers and community of players where the commercial interests independence from state interference, scenarios where both the player occupying a fictive space and are relevant only to the space. An outsider to Norrath, such an ‘online ticket purchase becomes governed by some weird law of Cyberspace™’ (Wu 1999: 1197). Yet he admitted that ‘for a group of MUD users whose environment is entirely virtual and who perhaps see their physical lives as distinctly secondary, allowing this group of people to make their own rules does not seem outrageous™ (1197) Wu stated that MUDs are properly associated with ‘a thick Cyberspace sovereignty™’ (1202).

It might be argued, following our prior assertions, that the community of Norrath should be able to create its own rules for Norrath™s governance. Indeed, as discussed above in respect to the player-initiated, player-enforced, and SOE-codified â€œgame rules,â€œ™ this is exactly what the community of Norrath does. Arguably, no territorial sovereign can feel threatened by SOE™s establishment and enforcement of Norrathian rules that forbid negligent â€œ‘train™s™ and wrongful â€œ‘ninja-fooling™™ because the injuries that stem from these practices occupy a fictive space and are relevant only to the community that participates in that space. An outsider to Norrath, such as a typical jurist, would find any dispute over such practices perplexing or perhaps simply a matter of fantasy not worthy of legal attention (Lastowka & Hunter 2004a: 71; 2004b: 316). Thus, a claim to jurisdictional independence would not be based upon deference to a competing geographic sovereign, but upon a belief that the affairs of Norrath are simply outside of the proper scope of legal regulation (representing, perhaps, a legal disdain toward social disputes over â€œfiction™™). As Dan Hunter and I have previously suggested, this kind of â€œ‘dismissive deference™™ may be adopted by courts (ibid.).

However, Norrath is not a self-regulating polity, but is guided in its shape by the goals of a commercial enterprise, SOE. While there are undoubtedly possible scenarios where both the player community and SOE would mutually desire independence from state interference, there are also actual and potential conflicts where the commercial interests of SOE and the interests of EverQuest™s community of players may diverge. Both game â€œ‘owners™™ and players may feel the temptation to invoke the power of the state when conflicts arise.

The tension between developers and players may throw a wrench into any functional â€œ‘autonomy™™ for Norrathian community, because the argument for such autonomy will likely be raised as a defensive tactic by either SOE or its players. In other words, the degree of community â€œ‘independence™™ granted to Norrath will likely be determined when either SOE or its players is contesting the desirability of that independence. In such a setting, the success of a novel legal defense based upon an untested theory of jurisdiction cannot safely be assumed.

**Freedom to Play and Design**

At least three commentators on virtual worlds have argued that greater jurisdictional autonomy is required for MMORPGs because standard forms of legal
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and Bartle, and essentially endorses the claims of both players and designers to
autonomy from extrinsic control by the state. However, as explained above, there
is not much of a doctrinal basis for the claims of â€œfreedom to play and
designâ€œ made by Castronova, Bartle, and Balkin: Indeed, Professor Balkin
recognises this in his article by ultimately advocating the same type of legislative
intervention sought by Castronova in order to insulate virtual worlds from standard
legal rules. To some extent, this can be read as an appeal to the legal recognition
of virtual worlds as formal legal communities, because, as discussed above, it is
hard to frame such arguments under existing law.

Norrath as Politics

Legal claims based on community, it should be noted, do not always take the form
of claims to autonomy and self-determination. The claims of TL Taylor and Sal
Humphreys are substantially different than any of the claims described above
(Taylor 2002; Humphreys 2004). Taylor and Humphreys essentially perform a
political critique of the manner in which intellectual property and corporate
ownership devalue the equitable interests of users as co-creators of the value
provided by MMORPGs. This argument resonates with a broader zeitgeist of such
claims being made in scholarship (for example, Boyle 1996; Coombe 1998), and
Taylor and Humphreys situate their criticism in this vein. Dan Hunter has called
such scholarship a recognition of a new form of â€œcultural workâ€œ in which
communal claims are levied against regimes of corporate power premised on
intellectual property rights. Hunter explains: â€œthe Marxist interpretation of the
culture war is this: To what extent are we happy with corporate intellectual
property owners gaining control over the mechanisms of creative activities? To
what extent do we want individuals to take control of their creative lives?â€œ
(Hunter 2005).

Taylor and Humphrey suggest that the contractual structure of EverQuest and
SOEâ€™s reliance on existing regimes of intellectual property award insufficient
value to the creative labor provided by the player community. (Taylor 2002;
Humphreys 2003; Humphreys 2004; Taylor 2006). I am sympathetic to these
arguments and the broader arguments in which they are situated. However, these
claims (even more so than the claims of the copyleft movement generally) demand
some greater prescriptive elaboration. Arguments in this vein may be normatively
attractive to scholars, but much work needs to be done to connect them with the
workaday business of shaping legal doctrine. Even more work needs to be done in
ordering threaten â€œfreedomsâ€œ that create the value in virtual communities.
The arguments made with regard to â€œfreedom to play and designâ€œ are
largely congruent with those made on behalf of community autonomy in essence.
They generally posit MMORPGs as separate communities â€“ spacesâ€œ from
whence spring claims to autonomy. However, they speak in terms of putative
rights, not independent jurisdiction.

First, Edward Castronova, who first documented the secondary markets for virtual
properties in Norrath, has argued for a â€œright to playâ€œ (Castronova 2004).
Castronova argues that virtual worlds must be affirmatively immunised by the
state from the reach of law due to the unique capacity of virtual worlds like Norrath
to provide access to â€œthe mental states invoked by play, fantasy, myth, and
sagaâ€™s that have â€œimmense intrinsic valueâ€œ (2004: 185). The influx of
legal ordering into these spaces, according to Castronova, threatens them with
being â€œswallowed up in the turbulent rush of ordinary human affairsâ€™ (208-
9). Castronova has proposed that the exclusion of law from these spaces might be
seen as a new form of legal fiction, along the same lines as the legal fiction of the
limited liability corporation. Hence, his argument seems premised, implicitly, on the
legal recognition of Norrath as a particular form of autonomous community
association.

Second, Richard Bartle, co-creator of one of the first virtual worlds and author of
Designing Virtual Worlds, shares Castronovaâ€™s antipathy toward legal
regulation of virtual worlds. However, Bartleâ€™s concern is about the potential
effect of lawâ€™s influence on the freedoms he believes should be enjoyed by
virtual world designers. Bartleâ€™s position is that virtual world administrators
â€“ must, on occasion, change the virtual world in ways that some - perhaps all - of
the players will find unpalatable. While â€œdesigners are able to ignore
playersâ€™ opinions, the virtual world can continue to evolve and improve.
Anything that served to limit this process would limit the virtual worldâ€™s
evolutionâ€™ (Bartle 2004b: 30). In other words, Bartleâ€™s claim is that
designers must be protected against power that might fall to players - a more
democratic organisation of power is undesirable because designer autocracy is
more desirable in light of Bartleâ€™s vision of the nature of virtual worlds. Bartle
thus shares Castronovaâ€™s calls for autonomy, but in support of the right of the
designer to shape the form of player experience. This claim might be framed as a
right to social authorship within the context of virtual worlds.

Finally, law professor Jack Balkin has echoed both Castronova and Bartle in an
article that places these claims in a legal context. In an article in the Virginia Law
Review, Professor Balkin argues for both â€œfreedom to designâ€œ and
â€œfreedom to playâ€œ within virtual worlds. Balkin frames the issue thusly:

The key question is how the law should preserve and defend the
autonomy of virtual worlds and those who play within them,
including the ability of participants in those virtual spaces to
develop and enforce their own norms. This question is important
precisely because those internal norms can be preempted or
made irrelevant by law. (Balkin 2004: 2045-6)

Balkinâ€™s view recognises the tension between the arguments of Castronova
and Bartle, and essentially endorses the claims of both players and designers to
autonomy from extrinsic control by the state. However, as explained above, there
is not much of a doctrinal basis for the claims of â€œfreedom to play and
designâ€œ made by Castronova, Bartle, and Balkin: Indeed, Professor Balkin
recognises this in his article by ultimately advocating the same type of legislative
intervention sought by Castronova in order to insulate virtual worlds from standard
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attractive to scholars, but much work needs to be done to connect them with the
workaday business of shaping legal doctrine. Even more work needs to be done in

order to connect any proposed doctrinal shift in intellectual property law generally to the highly peculiar thing that is EverQuest. Observing the equitable imbalances that stem from a productive yet assertedly disenfranchised player community is an admirable first step. But the second step is to formulate a superior structure of rights and play - and this will almost certainly be a piecemeal process.

Indeed, the community critique places us in a very familiar political game. It is possible to speak generally of how the law might treat EverQuest as text™ or EverQuest as game™, but if we state that EverQuest is a community™ we give ourselves a great deal of leeway and very little direction. The insight that players of EverQuest are not passive consumers or game players, but instead are members of a community is actually not much of an answer to any legal problem. Instead, it drops the ball squarely in the court of politics. Perhaps this is best. In the political forum, we will all be forced to participate, to the extent we are interested, in finding a fitting way to rule and regulate EverQuest. The best direction for such an open question, however, is by no means obvious.

If players do agree upon a given reform agenda for the legal rule of Norrath and worlds like it, the good news is that they will be in luck. Sony has promised that you will rule the Planes of Power. You (aggregated as we, collectively) indeed will rule the Planes of Power in states that operate in a democratic fashion. We will do so, however, only insofar as we can agree upon a clear policy direction that can be codified in rules and legal structures, and assert our political will to have the state recognise our wishes. And it must be noted that if we, as a collective, wish SOE to operate in some way that deviates substantially from its normal goals as a profit-oriented business, there will be organised resistance. If we err regarding Norrath by treating it too much as a text, a game, or a community, these errors (however defined), might be corrected through new appeals to the courts and legislature. To ultimately rule the Planes of Power, we must play a game - politics - that is messy, frustrating, tiring, difficult - and at times produces outcomes that are unfair. Unlike EverQuest, players in the political game are never assured of victory. However, those who regulate Norrath as text, game, or community ultimately will rule the Planes of Power, in the most meaningful sense of that term.

References:


