YOU WILL RULE THE PLANES OF POWER!

Greg Lastowka
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On the back of a well-known *Everquest* strategy guide, it is stated: "You will rule the Planes of Power!" (Cassady and McBride 2002). This guide, the Prima Official Strategy Guide, is licensed as an "official" *Everquest* guide by Sony Online Entertainment ("SOE"). Sony Online Entertainment ("SOE") is the owner of multiple intellectual property rights in *Everquest*, and it places legal restrictions on player behavior within Norrath by virtue of a blend of property rights and contract. So, actually, it would seem that SOE, and not you, will rule the Planes of Power.

There is obviously some confusion here in what it means to "rule the Planes of Power" and this is typical of *Everquest*. 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; Klastrup 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 and 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 tries to build a bridge between critical readings that frame *Everquest* as a text, a game, or a community and the legal orderings that we might expect to flow from these frameworks. The divergent critical perspectives on *Everquest* provide an avenue for discussing the possible varieties of legal regulation that might be applied to Norrath and other virtual worlds. As popular participation in games like *Everquest* grows, social conflicts are arising in Norrath (or other places like it) and giving rise to litigation. (Lastowka and Hunter 2004b.) The definitional ambiguities of Norrath therefore will require some legal resolution. The law will be forced to decide how it might treat Norrath: should it be approached as a text, a game, or a community? After a brief introduction, I will explain how *Everquest* has been read critically pursuant to each framework, and explain how different legal policy approaches might flow from each classification.

A Brief Introduction to Everquest

To understand *Everquest,* it is important to have a general sense of its relation to other massively multi-player role-playing games ("MMORPGs") and preceding cultural genres. 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 $10 a month to maintain gaming accounts in *Everquest's* Norrath, producing substantial revenues for SOE, the game's legal owner. This was noted by other game developers, who attempted to replicate the success of *Everquest*. Soon the market was flooded with many MMORPG titles based on the *Everquest* formula that attempted to capture some of the *Everquest* market share. The financial success of *Everquest* largely gave birth to the MMORPG genre. (Bartle 2004a: 25).

The influence of *Everquest* over the genre is hard to overstate: almost all popular MMORPGs today borrow much of their structure and formula of *Everquest*, including

particular terminology that was coined or at least popularized in *Everquest*. Today, *Everquest* still claims hundreds of thousands of players, but it is gradually losing subscribers to newer titles that take advantage of advances in computer graphics and the appeal of popular licenses. Blizzard Entertainment's *World of Warcraft* and Mythic Software's *Dark Age of Camelot* are two very popular MMORPGs that are essentially variations on the theme of *Everquest*. SOE even has its own competing titles that have siphoned subscribers from *Everquest*, including *Star Wars Galaxies* and *Everquest II*.

While *Everquest* is generally regarded as the most important early MMORPG, its success came primarily from timing and polish, not any 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 (epitomized 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*. (Monfort 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 game play based on the same combat and advancement progressions present in a host of earlier games.

The appeal of *Everquest* over these earlier role-playing games was social and technical. *Everquest* was social in that it offered subscribers a shared world, where players interacted with each other through chat and avatar representations. Players of *Everquest* do not share one collective version of Norrath, but instead are split among various "shards," with each shard offering a full version of Norrath and corresponding to a particular complex of server hardware. Players who select a given shard will share their version of Norrath with two thousand players (approximately) who selected that same shard. These shards can have different characteristics, with some emphasizing combat between players, some emphasizing role-play, and some dominated by particular organized groups of players known as guilds. (Marks 2003: 178-180). Of course, the idea of a massively social fantasy game world did not originate with *Everquest*. Social fantasy game play within a computer network was the essence of MUDs, which flowered in the 1980's and 1990's. (Curtis 1993; Mnookin 1996).

The second component of *Everquest's* breakthrough was its graphical nature, even though it was not completely original in this respect either. *Everquest's* major rival MMORPG was Electronic Arts' *Ultima Online*, which had launched in September of 1997, more than a year before *Everquest*. (Kolbert 2001). However, *Everquest* quickly surpassed *Ultima Online* in popularity, garnering more subscribers that Ultima Online by the end of its first six months. (Bartle 2004a: 26). *Everquest's* lush (by contemporary standards) visual style was the most likely reason. *Everquest* used a first-person three-dimensional perspective while *Ultima Online* employed a cartoonish "isometric" bird's-eye perspective reminiscent of many arcade games of the 1980's. In *Ultima Online*, all objects, including the representations of players (known as "avatars"), were shown at the same size.

Everquest's Norrath, by comparison, was presented in the three-dimensional visual style that was made popular by immersive first-person shooters such as the old arcade game *Battle Zone* or id Software's *Doom*. (Lastowka & Hunter 2004: 23). An earlier MMORPG, Meridian 59, had also employed this perspective, but never gained a large base of subscribers. (Bartle 2004a: 25). In *Everquest*, players saw Norrath essentially through the eyes of their avatars. They could actually see the horizon and objects and players "in the distance." As they moved toward these objects, they would grow larger until they occupied the player's entire field of vision. *Everquest* was thus a more visually

immersive game than *Ultima Online*. Nearly all successful MMORPGs released since 1999 have adopted the visual style of *Everquest*. (Bartle 2004: 27).

Norrath as Text

The game of *Everquest* takes place in the fantasy world of Norrath. Though many have emphasized 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…" (Burke 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 weaved 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 world of Norrath that the designers created now consists of various continents, various "planes," and a moon called Luclin. (Sony 2002b). It is inhabited by a fictional population of thousands of fantasy software creatures, which is generally divided into two categories. First, there are NPCs or "non-player characters," a term borrowed from the role-playing game *Dungeons & Dragon*s. NPCs are fictional persons that players interact with for strategic purposes, such as to gather information or rewards, or to barter. (Tyler 2001: 83). Second, there are mobs, a phrase derived from "mobile object," which originated in textual MUDs. Mobs generally exist for no other purpose than to challenge players in combat and then drop treasure. Mobs range from rats and snakes (for less experienced players) to dragons and demigods (for teams of experienced players).

With NPCs and mobs, we have a fiction software society of sorts in Norrath. 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 the malevolent magical "dark lord" Sauron who rules the territory of Mordor. Sauron spends the trilogy attempting to rule Middle Earth, but is ultimately defeated by a loose alliance of virtuous men, elves, dwarves, and a quartet of plucky hobbits. In the concluding novel, *The Return of the King*, Tolkien describes the initial steps of one of the trilogy's protagonists, Aragorn, in asserting his monarchic and dynastic rule over Gondor. Likewise, in the first three *Star Wars* movies, the galaxy is ruled by an evil Empire, primarily represented by Darth Vader. Ultimately, the evil Empire is defeated by an alliance of virtuous rebels, led primarily by a plucky protagonist, Luke Skywalker. At the end of *The Return of the Jedi*, the viewer is led to conclude that the success of the rebellion will lead, in all likelihood, to some form of more enlightened democracy. (The exact political details are left to the filmgoer's imagination, though they are undoubtedly made clear in some other Lucasfilm-licensed product).

So 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 the aforementioned quasi-political endings, Norrath has no ending. 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-fiction 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 fictive politics of Norrath are only present to provide a pleasing context for these player activities, which consist mainly of combating mobs, completing quests, and socializing 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 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 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, *e.g.,* guards 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

Espen Aareseth, in his book *Cybertext*, argued that computer games might be analyzed as a peculiar form of navigable literature, understood as inherently linked with the participatory labor (or play) of the reader (Aarseth 1997). 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. (Aarseth 1997: 20-21; 26-27). 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.

Throughout *Cybertext*, Aarseth seems painfully aware that his arguments might be misread as simply re-telling a familiar postmodern story about the writerly nature of all reading and the death of privileged interpretations. This is Aarseth's bugaboo, however—his goal is to make clear that cybertexts are not a technological validation of the linguistic turn, but instead form a structural innovation in the workings of textual machines. (Aarseth 1997: 13-17). In order to showcase formalism, Aarseth seems to keep his hermeneutic approach fairly traditional. (Aarseth 1997: 20). However, there are some points in the book where his discussion of cybertextual hermeneutics becomes very non-

tradition. Of particular note is his discussion of MUDs. (Aarseth 1997: 142-161), which appears conflicted (quite understandably) as to whether MUDs are best defined as games, texts, or communities. (Craft 2005: 180-181). Torill Mortensen, who has carried forward the cybertextual investigations of MUDs, has likewise asserted that they place the putative "reader" in the position in a position that "is dangerously close to authorship." (Mortensen 2002). The arguments of Aarseth and Mortensen, though targeted mostly at player production of MUDs, seem clearly pertinent to the text of *Everquest.* Like MUDs, *Everquest* integrates a fictive text with potentials for social play and thus arguably blurs the traditional lines between player and collaborative author.

The possibility that a computer game, as a performative text, could be authored not by the author of its code, but instead by player who manipulates authorial affordances within the software interface, was actually entertained by a court of law over a decade before Aarseth promoted it as a path for new media analysis. 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 their work, the arcade game *Defender*. The defendant attempted to rebut this claim by arguing that "the 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 screen." In other words, the defendant in the case claimed that the creator of the game'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 player'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 player'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 "fiction networks." (Craft 2005: 12). Craft describes these as proprietary texts "composed of the large-scale conglomeration of other texts." (ibid.). Craft's work is congruent, in many ways, with Lisbeth Klastrup'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 player's power of "tellability" within virtual worlds. (Craft 2005: 185-86; Klastrup 2003b: 14.) Borrowing from the work of Marie Laure-Ryan (*e.g.* Ryan 2001: 259), Klastrup notes how the experience of playing through the text of *Everquest* often makes for "tellable events" and she thus posits that Norrath amounts to props and "a stage for an experience of a shared lived world." (Klastrup 2003a: 103). In Klastrup'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 analogize this aspect of *Everquest* to a child's dollhouse or set of blocks. The point is that *Everquest* provides a form of artistic creativity to players, but it is the player'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 "power gamers" seem to enjoy recounting memorable game experiences to their friends and co-players. (Taylor 2006). These narratives that are 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 the stories are significant 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.)

The most common story in *Everquest* for each player is probably a version of the Horatio Algers "rags to riches" progression story. (Yee 2005: 1). Each player's avatar begins the game weak and penniless and proceeds down a path of acquiring ever more powerful equipment and defeating ever more powerful mobs. When a player's avatar is immensely powerful, she looks back on a narrative of personal toil that resulted in the acquisition of fictional wealth, in-game status, and virtual power. Again, there are likely few individuals other than the player or her *Everquest* friends who will care about this narrative, and as a narrative it isn't particularly original or compelling. One can also critique the progression in very much the same way that one can critique the Horatio Algers story. But the progression story does appear to provide a powerful motivation for game play, just as the Horatio Algers story seems to remain at the core of American cultural identity. Indeed, perhaps the enjoyment of this animating "story" of acquisition and status provides some explanation of why players participate in what they often complain is tantamount to drudgery (a.k.a. "grinding") in repeatedly slaying mobs and completing tedious quests. (Squire and Steinkuehler 2004: 6-7).

The personal narrative of progress is social as well, though. When interacting with other players in *Everquest*, one is generally made aware that of their power and status, and thus of their personal grounding in the same narrative. The props are shared, the narratives overlap, and the experience of the narrative is often communal. For instance, guilds who perform successful raids on Lord Nagafen or other epic mobs will often turn that collective experience into a story by posting accounts and illustrations of the event online. Particular "races" and "classes" within the game will often form communities to discuss optimal strategy and shared experiences. Thus, shared fiction provides a basis for community. Communities based in *Everquest* will often form the basis of meetings IRL, making it hard to characterize the social structures and investments as fictive. (Taylor 2006). Some *Everquest* narratives are indeed recounted by married couples who first met through game play in *Everquest*. Thus, the fiction of Norrath is woven into the time-honored pedestrian narrative of the "first date."

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 conducted socially. Perhaps it is a bit strange to discuss *Everquest'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 strategy. (Hayot and Wesp 2004b). Player avatars and NPCs in Norrath are fictively framed as representatives of particular races and classes. This fictive frame is conjoined with a strategic dimension, equally a structure that is part of the designer's authorial intent, that both constrains the player's interaction with the text and provides meaning to the text as experienced. (ibid.).

One important example of fictive/strategic interplay is Norrath's factional system. While the factional system has decreased in importance throughout *Everquest'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" players 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 *Ruins of Kunark* expansion, 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 and 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 "homes" 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 Iskar, generally started at their designated "evil" cities and were "killed on sight" (KOS'd) by the software NPC's and mobs of "good" cities. (Tyler 2001: 49,55).

The game's schisms can be healed—for instance, Dark Elves can kill the enemies of a particular city and eventually be welcomed as allies by their enemies. But improving a factional standing in the game takes time, and may result in a bad faction with those mobs who must be killed to gain it. In some cases, factional conflicts force difficult strategic choices. For instance, Wood Elf players who begin in the tree-city of Kelethin on the continent of Faydwer may be inclined to kill Frogloks mobs (frog-like humanoids) for profit and advancement. However, this is generally not advisable, because losing faction with the Frogloks will prevent the completion of a strategically important quest. (Tyler 2000: 174). In some cases, a bad factional standing can be impossible to overcome. For instance, on the continent of Antonica, in the sub-regions that together compose the city of Freeport, the Paladins (a player class) and the Freeport Militia vie against each other. (Sony 2002b: 152-162). Paladins (and those who aid paladins) are KOS'd by the guards of the evil Freeport Militia. It is impossible, according to player reports, to curry the favor of the Freeport Militia once it has been lost. Since access to the militia-controlled areas of Freeport may be important strategically, the fear of bad faction with the militia can force social tensions into player relations with members of the Paladin class. Many other such factional conflicts exist, and social play choices must, as Hayot and Wesp note, be framed within the context of optimal strategy. (Hayot and Wesp 2004a). Player factions force the community of players to view their game play as existing within a complex fiction. This adds, at the very least, a fictive patina to any claim of behavioral emergence within the player community. (Burke 2005).

This discussion of authorial nature of Norrath is intended as check to the extent to which scholars might conceive of Norrath and other MMORPGs as simply technologically mediated communities. (Benkler 2004; Balkin 2004). In Everquest, and most other MMORPGs, community is grounded 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 is never independent of it authorial nature, discussions of Norrath should never lose sight of its player-less and player-utilized text. (Lastowka and Hunter 2004a: 59-63).

Regulating the Text of Norrath

Law limits permissible speech, whether that speech is the text of Norrath or a conversation on a real 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.

It is important to note that copyright hindered SOE in its creation of Norrath by constraining what Norrath could permissibly 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 illegal. Only at the sufferance of the appropriate copyright and trademark owners would Norrath have been allowed to exist at all. (SOE now produces the MMORPG *Star Wars Galaxies* pursuant to such a license, and another company is apparently creating *Middle Earth Online* with a license from the Tolkien estate.) Copyright law and trademark have also led SOE to constrain player freedoms in Norrath in ways that don't directly benefit SOE's interest. For instance, player names that make reference to trademarks are expressly not permitted. While it is dubious that the use of an avatar named "Sears" or "Intel" in *Everquest* would actually create real legal liability, an excess of caution has apparently led Sony to prohibit such names. On the whole, however, framing Norrath as speech is a legal approach that will probably be highly appealing to designers. Indeed, the copyright exception to freedom of speech is something that is fairly essentially to Sony's current "rule" of Norrath. While players might create their own copies of SOE's software and use their own "shards" of Norrath on unauthorized servers, this practice can never become significantly widespread because it would infringe Sony's copyright in the game. Copyright therefore probably benefits SOE as a company much more than it hinders SOE. In the case of *Star Wars Galaxies*, for instance, copyright can enable SOE to retain a monopoly on fictive worlds set in the *Star Wars* universe. (Craft 2005).

If we frame Norrath as simply a new flavor 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 (and notably *not* private actors) from imposing restraints on speech activities, subject to the exceptions noted above. Because the text of Norrath is clearly a form of speech, it should follow that First Amendment protections applying to other speech should apply to the text of Norrath. (Lastowka & Hunter 2004b: 297; Hayot and Wesp 2004a). The equation of Norrath with a form of speech is a view that seems favored by legal scholars Yochai Benkler and Jack Balkin. (Benkler 2004; Balkin 2004). Depending on one's view of the proper policy outcomes, privileging Norrath as speech over Norrath as game or

community may be desirable. In other words, even if you think Norrath is something different than speech, it may be wise to pretend it is simply a text in order to place its regulation safely within the traditional First Amendment havens. But, in fact, Norrath does much more than represent the authorial speech of its designers, and it is to the regulation of games and communities that I will turn next.

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 center. The typical large-scale *Everquest* raid consists of waiting an hour or so for a group to finally assemble and organize (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. The raid ends with the eventual conquest of the enemy (or failure) and the recovery of some "loot." This social activity is textually embedded and follows a certain predictable sequence—that much is incontestable—but the *Everquest* raid and its manner of enjoyment is not analogous to *War & Peace*. (Aarseth 1997: 3).

It is true that we can and do turn games into stories—any newspaper's sports section demonstrates this to some degree. It is also true that the pleasure of sports spectatorship might be seen to have similarities to the pleasures of narrative. Current "reality television," for instance, cheerfully blurs lines between staged narratives and the recording of agonistic play. But it is also true that 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 enable or unlock a possibility of narrative. For the player, the pleasures of play, while creative, seem superior to the pleasures that are produced by a subsequent moment. Recordings of games are lifeless to a player. As Torrill Mortensen notes: "To study logs from the game as texts afterwards is like studying a description of an event rather than being present at the event." (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: 92-93; Juul 2001; Juul 2003: 137-144). *Everquest*, being a game, requires the player to perform and acquire interactive mastery over an environment that resists the player's will to control it—conventional narrative texts do not force anything analogous. (Aarseth 1997: 4). A game's fictive world supports and lends meaning to, but does not create, its process of play. (Myers 2003a). Jesper Juul makes this point about the popular game *Tetris*. While *Tetris* is clearly a computer game and a popular one at that, it would be quite a stretch to describe the focus of the player's fascination with *Tetris* as analogous to engagement in a story. (Juul 2001). David Myers frames this play activity, 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 game'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 "Who will rule the Planes of Power?" might be framed as a question of game regulation: who will provide the rules of game play? This approach accords with the theories of Johan Huizinga and Roger Callois, two of the most prominent theorists of play. Both Huizinga and Callois discussed games at

length, but had very little to say about stories. Instead, they viewed play as primarily about rules—clear and fixed rules that are invoked to structure permissible and impermissible actions directed toward a contested outcome. They also emphasized the social separateness of these types of play orderings. As Huizinga noted, play "proceeds within its own proper boundaries of time and space according to fixed rules and in an orderly manner." (Huizinga 1950: 13). Callois also emphasized 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 play's appeal. For instance, whereas law (via contract) generally permits the exchange of performance and property for money, these types of exchanges are commonly prohibited on fields of play, where accepting payment in exchange for poor performance is considered "cheating." (Castronova 2004: 188-192; Lastowka and Hunter 2004b: 304-307). Most games are structured as meritocracies of a sort, with each player's ability to contract and exchange suspended to enable the pursuit of "fair" competition. For instance, the rules of play generally award all players the same tools of competition (*e.g.* "regulation" bats and gloves) and the same opportunities for winning (*e.g.* an equal number of innings for each team). Other restrictions are designed to maximize the demonstration of skills and capacities that are seen as desirable (*e.g.*, the prohibition on personal fouls or on the use of performance-enhancing drugs). Of course, all "meritocracy" claims are relative to one's definition of merit, so it might be best to say that the structure of the regulation of most games is designed to enhance the degree to which that game measures certain arbitrary capacities (physical strength, intellectual agility, hand-eye coordination). In other words, the fact that the game rules focus on maximizing the importance of certain abilities is what marks the possession of those abilities as meritorious.

The one-player computer game historically has had no referees. To some extent, one might claim that the game's software code acts in lieu of a traditional referee, but this is hardly obvious, and it risks mischaracterization. In the well-known game of *Space Invaders*, for instance, the game's software permits a player's ship/base/gun to move to the left, to the right, to remain still, and to shoot. These constraints are arguably the game's "rules," but they are unlike ordinary rules in that they incapable of being broken. (Lastowka and Hunter 2004b: 307-311). One cannot go "out of bounds" in *Space Invaders* and there is no possibility of a stoppage of play. The only means of actually disobeying a rule in *Space Invaders* would be rewriting the code. If one were to do this, one would no longer be playing *Space Invaders*. Where a rule cannot be broken, is it properly understood as a rule? The code of a game is not truly analogous to a laws or even a game rule. Instead, coded rules are closer to inherent physics—that which is impossible is different than that which is impermissible. (Lastowka and Hunter 2004a: 56).

Everquest sits somewhere between a video game and a traditional game. On first glance, it may seem closer to *Space Invaders* than to golf or tennis. As in *Space Invaders*, the game rules of Norrath might be seen, at least at first, as those abilities and restrictions which are present in the game's code. Indisputably, software-coded "rules" do exist in Norrath, and these "rules" were set by SOE. Players can, and do, break these "coded" rules. This type of rule breaking is described variously as cheating, exploiting, duping, or hacking. For example, in 2004, an *Everquest* developer wrote to the community:

> Over the last few days there has been a growing community concern about possible cheating, exploiting and platinum duplication. Rumors and speculation have begun to run rampant, and I've received a lot of

concerned email on the topic...   There has been speculation in the community that in order to pull off some of the rumored exploits someone had to be working on the "inside"... [T]he nature of the cheat did not require such inside help. I can't describe the cheat method in any detail, but there was an experience cheat that allowed extremely fast leveling. This required some rather sophisticated cheating, but was being done without inside help. Obviously we have removed that exploit and banned any accounts that used it. (Lastowka 2004).

The statement that game accounts were banned "obviously" suggests the degree to which these activities are deemed illegitimate by SOE, which sets the rules of play in *Everquest*. As a legal matter, under laws prohibiting computer trespass, unauthorized player access to *Everquest*'s code level may even amount to a crime against SOE under existing laws. (Lastowka & Hunter, 2004b: 311-315). Still, players often to attempt to exploit game software, and these types of behaviors have long been part of the history of online communities. (Dibbell 1998: 195-226; Morningstar & Farmer 1990).

Of course, there is a fine line between what is exploitative of a coded software program and what is merely clever strategy. SOE thus promulgates written "rules" by which the game of *Everquest* must be played. Unlike in *Space Invaders*, all that is possible in Norrath is not permissible. The written rules promulgated by SOE serve to clarify what is and what is not a permissible manipulation of the game's software affordances. These written rules are set out in several documents, most notably the *Everquest* End-User License Agreement ("EULA") and the Terms of Service ("TOS"). Though participation in the game requires players to state they have read these documents, it is debatable whether most players actually do read them. Unsurprisingly, these documents are drafted by lawyers and serve largely to protect the interests of SOE by limiting its potential liabilities, requiring indemnification, and otherwise shifting most all allocatable rights structure to privilege SOE's interests over other possibilities. 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 SOE's absolute control, such as the following: "We may terminate [your account]... without notice... upon gameplay, chat or any player activity whatsoever which we, in our sole discretion, determine is inappropriate..." Essentially, according to the *Everquest* EULA, the rules of *Everquest* are whatever SOE says they are at any particular moment, and those who violate them will have their account terminated. However, because SOE seeks to *retain* paying subscribers, it is not surprising that the game rules of *Everquest* generally have the popular support of the community.

Some have even criticized MMORPGs for being *too* supportive of community interests. As David Myers notes "MMOG designs... are devoted to promoting "good" 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, emphasized, 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 of the account of a player who role-played a Dark Elf, a race of Norrath that is fictionally perhaps the most "evil" of the various races. (Taylor 2006). 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. (Marks 2003: 105-108).

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. Comparative to conventional games, Norrath has few referees. Upon the average amateur or professional athletic field where two players compete (*e.g.* tennis or wrestling), it is not uncommon for a referee to officiate formal matches. Games which involve teams of players (*e.g.* baseball or football) often require multiple referees to observe the actions of individual players and actively suspend players for cheating or fouls. By contrast, the game that takes place in Norrath features hundreds of thousands of players, and only a handful of referees—perhaps one for every 2000 players—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 "guilds"). Community policing in *Everquest* is done largely by players. (Grimmelmann 2004: 166-174; Pargman and Eriksson 2005). Strategically, a positive reputation and social connections with other players is almost required for player advancement. (Taylor and Jakobsson 2003). This social interdependence was an intentional part of *Everquest's* game design. (Marks 2003: 82-83; Taylor and Jakobsson 2003). Thus, in order to group, one must obey the various norms of the culture(s) of *Everquest*.

Emergent player rules in *Everquest* generally seem reasonable and reinforcing of a meritocratic game structure. One is not permitted to reap where one has not sown (*i.e.* prohibitions on "kill stealing" and "ninja-looting"), one is expected to share scarce resources equitably (*i.e.* prohibitions on "camping"), and one is expected to avoid negligently endangering other players (*i.e.*, prohibitions on "training"). (Grimmelmann 2004: 154-157; Tyler 2001: 7-10). Player rule structures can be the subject of vigorous debate (Taylor 2006), but they are ultimately not exceptionally creative rules. They are largely attempts among players faced with source of conflict to create norms of play and "fairness" similar to those found offline (*e.g.* the norms with regard to capture and "ownership" 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 primary difference between play and law appears to be seriousness. Play has long been associated with a rhetoric of frivolity. (Sutton-Smith 1997: 201-213). 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 from law and makes games inherently *inferior* social practice. (*cf.* Sutton-Smith 1997: 201-213).

How might law approach the game rules of Norrath? Perhaps surprisingly, the law seems to recognize 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

recognized 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. While social contract may provide some explanation for the law's treatment of sports injuries, other explanatory theories have been adopted by courts, suggesting that the phenomenon of law's deference to games pre-exists the doctrinal explanation for this state of affairs.

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 "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." (Berman, 2005: 506). Numerous states have additionally enacted, affirmatively, statutes that limit the liability of referees and sports official 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. State regulations on the practice and the form of the sport of boxing, for instance, are a clear example of the legal system setting the scope of permissible game rules. And in some cases, cheating on the playing field can lead to extra-legal penalties, as was learned by White Sox players in the 1919 World Series, who were subject to a criminal prosecution for their attempt to "throw" a game. What this reveals is an inherent tension between deference to game ordering and the broader claims to authority made by law. This is nicely summarized by John Barnes:

> Sports maintain internal rules and structures to regulate play and organize competition. In sports law, the wider legal system impinges on this traditionally private sphere and subject the politics of the sports game to the politics of the law game. The result is a double drama as the deep human concern for play combines with the concern for social justice. (Barnes 1996: 2-3.)

The United States Supreme Court has actually struggled with this conflict between sports and law in the case of *PGA Tour, Inc. v. Martin*. In that case, the Court overruled the PGA's interpretation of the rules of golf in favor of another version of those rules as promulgated by Congress. The question was one of statutory interpretation. The PGA Tour had refused to permit golfer Casey Martin to use a golf cart to drive between holes of a golf course during play. Casey claimed that the Americans with Disabilities Act should permit him to use a golf court as a reasonable accommodation for his disability. In finding that Congress had intended that the PGA ignores its own rules and to accommodate Casey, Justice Stevens, based the Court's decision in the importance of the rule at question to the game. He stated that the "walking rule that is contained in [PGA's] hard cards, based on an optional condition buried in an appendix to the Rules of Golf, is not an essential attribute of the game itself." Hence, Congress had apparently required the PGA to ignore this rule. Justice Scalia, in dissent, disagreed that Congress would (or should) rewrite private game rules. In defense of play's inherent autonomy, Scalia asked:

> Why cannot the PGA TOUR, if it wishes, promote a new game, with distinctive rules...? 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. If game rules so dictate, it is clear that 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 "owners" 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 wall 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 the state's deference to game structures is a much hazier question than its deference to free speech.

Norrath as Community

Finally, we can turn to the third frame for considering *Everquest*: as a community. The factual basis for this claim has already been touched upon at various points in prior discussion. In describing the communal nature of *Everquest's* tellable events, the social effects of factional constraints, the mechanics of group raids, the importance of games as "separate" communities ordered by rules, and the reality of community policing, it should be clear at this point that *Everquest* is, in significant part, created and sustained by a community of players. General treatments of video games tend to differentiate *Everquest* and the MMORPG genre from other games based on their social nature. (Gee 2003: 169-198). Not surprisingly, statements from the developers themselves also recognize the importance of community to the game. (Marks 2003: 94). Brad McQuaid, one of Everquest'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 "New User's Guide" to *Everquest*, SOE seems almost defensive about the communal nature of the game, stating: "*Everquest* has been bashed for being a game that's impossible to play without grouping with other players." (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. (Bartle 2004a: 473-624). Among them are those, such as myself, who are interested in the implications of this community nature for legal regulation (Burke 2004; Dibbell 1998; Lastowka & Hunter 2004a; Lessig 1999: 11-13; Mnookin 1996). But understanding what it means (as a legal matter) to say that *Everquest* and other MMORPGs are communities is not altogether clear.

The most thorough discussion of the community of *Everquest* is T. L. Taylor's forthcoming four-year ethnography of the game. (Taylor 2006). Taylor'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, Taylor's investigations also reveal that the *Everquest* community is a community permeated by fictional structures and practices: a far different creature than geographically grounded communities or even "conventional" 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 Dibbell's investigation of

LambdaMOO (Dibbell 1998) or Daniel Pargman's description of SvenskMUD (Pargman 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 rules governing society. Legal ordering *is* essentially dependent upon some foundational claim to community. Claims to community in law most often appear in the form of geographic communities (giving rise to regulation by nations, states, counties, boroughs, and districts) or to associational communities (giving rise to the legally recognized forms of corporations, partnerships, churches, unions, families, and marriages). Hence, claims of law are essentially inextricable from claims of community.

Norrath, quite characteristically, does not fit into any conventional legal notion of community. While SOE is certainly incorporated, the greater community of *Everquest* players cannot be framed as any traditional form of legal association. Likewise, while Norrath is a "cyberspace" that, in theory, might give rise to some degree of legal autonomy based on geography, this too is highly problematic as a legal matter—its geography is a fiction within an existing geopolitical ordering. Hence, with regard to claims of autonomy based on geography or association, it isn't clear exactly where the community nature of *Everquest* might find its legal teeth.

Dan Hunter and I have previously proposed that the degree of community cohesion within Norrath and other virtual worlds might make claims to jurisdictional independence cognizable—that the law might reify the legal orderings arrived at by community of *Everquest* in a formal manner. We made this claim aware of the fact that several years ago, many legal scholars had toyed with the notion that the Internet and the World Wide Web might similarly provide a "separate" jurisdiction that would exist with some independence of prior legal regimes. We claimed that while this idea had largely been abandoned, it might make more sense when applied to MMORPGs, stating:

> The historic failure of cyberspace to become an independent legal arena… can be distinguished… based upon the presence of legitimate communities within virtual worlds… Websites and other prior technologies of cyberspace served as remarkable tools for communication, but they did not build truly independent and self—governing communities… [A]vatar existence and avatar community *only* occurs within virtual worlds, making the emergence of virtual law within those worlds much more likely. (Lastowka and Hunter 2004a: 69).

MMORPGs are anchored in a fiction of place that is, unlike the Internet generally, both spatially independent (in some meaningful sense) and culturally self-regulatory. Allan Stein and Timothy Wu, both skeptics of Internet jurisdiction generally, have also seemed willing to concede that tight-knit communities embedded in fictive technologies have more cognizable jurisdictional claims. (Stein 1998; Wu 1999). For instance, Wu suggested it was "outrageous" that an "online ticket purchase becomes governed by some weird law of Cyberspace." (Wu 1999: 1196-1202). 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." (ibid.) Wu stated that MUDs are properly associated with "a thick Cyberspace sovereignty." (ibid.).

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 "game rules," this is exactly what the community of Norrath does. Arguably, no territorial sovereign can feel threatened by the Sony's establishment and enforcement of Norrathian rules that forbid negligent "trains" and wrongful "ninja-looting" 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 and Hunter 2004a: 71; 2004b: 316). Thus, a claim to jurisdictional independence would not 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 affairs of "fiction"). As Dan Hunter and I have previously suggested, this kind of "dismissive deference" may be adopted by courts. (ibid.).

However, it is important to separate Norrath from LambdaMOO. Norrath is not a small-scale experimental polity, but a commercial enterprise conducted by SOE. The community is not entirely self-regulating, but is guided in its shape by a commercial enterprise. 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 (such as the Mystere incident described above) where the commercial interests of SOE and the interests of *Everquest's* community of players may diverge. Both game "owners" and players may feel the temptation to invoke the power of the state when conflicts arise. Taking the vantage point of Sony, it should be observed that when SOE contracts with players, it invokes the power of the state to support that contract. As a practical matter, SOE is outnumbered by its players, and requires the assistance of the state to protect itself and its intellectual property monopolies. From the vantage point of the players, hundreds of thousands of individuals are heavily invested in the game and have divergent desires. It is possible, therefore, that some players will petition the state to enforce some claims of right when SOE acts in ways they feel are inappropriate.

The tension, then, between developers and players may throw a wrench into any functional "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 "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

Three well-known commentators on virtual worlds have argued that autonomy is required for MMORPGs because standard forms of legal ordering threaten "freedoms" that create the value in virtual communities. The arguments made with regard to "freedom to play and design" are largely congruent with those made on behalf of community autonomy in essence. They generally posit MMORPGs as separate communities "spaces" from whence spring claims to autonomy. However, they speak in terms of putative rights.

First, Edward Castronova, who first documented the secondary markets for virtual properties in Norrath, has argued for a "right to play." (Castronova 2004). Castronova argues that virtual worlds must be affirmatively immunized by the state from the reach

of law due to the unique capacity of virtual worlds like Norrath to provide access to "the mental states invoked by play, fantasy, myth, and saga" that have "immense intrinsic value." (Castronova 2004: 185). The influx of legal ordering into these spaces, according to Castronova, threatens them with being "swallowed up in the turbulent rush of human affairs ordinary human affairs." (Castronova 2004: 208-209). 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 Castronova's antipathy toward legal regulation of virtual worlds. (Bartle 2004b) However, Bartle's concern is about the potential effect of law's influence on the freedoms he believes should be enjoyed by virtual world designers. Bartle's position is that virtual world administrators "must, on occasion, change the virtual world in ways that some—perhaps all—of the players will find unpalatable. While… designers are able to ignore players' opinions, the virtual world can continue to evolve and improve. Anything that served to limit this process would limit the virtual world's evolution." (Bartle 2004b: 30). In other words, Bartle's claim is that designers must be protected against power that might fall to players—a more democratic organization of power is undesirable because designer autocracy is more desirable in light of Bartle's vision of the nature of virtual worlds. Bartle thus shares Castronova's calls for autonomy, but in support 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 "freedom to design" and "freedom to play" within virtual worlds. Balkin frames the issue thusly:

> [T]he 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: 2045-2046).

Balkin's view recognizes 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 "freedom to play and design" made by Castronova, Bartle, and Balkin. Indeed, Professor Balkin recognizes this in his article by ultimately advocating for 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. Of course, at present, it seems that neither SOE nor many *Everquest* players are bringing their concerns to Congress. Litigation over virtual worlds, on the other hand, is already in process. (Lastowka 2005).

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 (*e.g.* 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 "culture war" in which communal claims are levied against regimes of corporate power premised on intellectual property rights. Hunter explains: "[T]he 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?" (Hunter 2005).

Taylor and Humphrey suggest that the contractual structure of *Everquest* and SOE'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. Indeed, the liminal nature of *Everquest* makes these claims especially powerful. My primary criticism of the arguments is that, in light of the liminal nature of *Everquest*, these claims (even more so than the claims of the copyleft movement generally) seem to lack significant doctrinal "hooks" that a practitioner of the law might employ. Aruguments in this vein may be normatively attractive to scholars, but much work needs to be done to connect them with the workaday business of legal doctrine. Even more work needs to be done in order to connect any proposed doctrinal shift in intellectual property generally to the highly peculiar thing that is *Everquest*.

It is possible to speak generally of how the law might treat "Norrath as text" or "Norrath as game," but if we state "Norrath is a community" we give ourselves a great deal of leeway and a court or legislature not much direction. The insight that players of *Everquest* are not consumers or standard game players, but instead are members of a community is not an answer to a 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, I think, is by no means obvious.

However, if players do agree upon a given reform agenda for the legal rule of Norrath and worlds like it, they may be in luck. Sony has promised that *you* will rule the Planes of Power. *You* (aggregated as *we*, collectively) *will* rule the Planes of Power in any state that operates democratically. 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 recognize our wishes. And it must be noted that if we, as a collective, wish SOE to operate in some way that deviate substantially from its normal goals as a profit-oriented business, there will be organized resistance. If we err in its interpretation of Norrath by treating it too much as a text, a game, or a community, these errors (however defined), this might be corrected through new appeals to the courts and legislature. To rule the Planes of Power, we must play a game (politics) that is messy, frustrating, tiring, difficult—and at times will be unfair. in Unlike *Everquest*, all players are not assured of victory. However, if you can rally others to your cause of regulating Norrath as text, game, or community, it is possible that you *will* rule the Planes of Power, in every meaningful sense of that term.

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