



“Whose Game Is This Anyway?": Negotiating Corporate Ownership in a Virtual World

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Abstract

This paper explores the ways the commercialization of multiuser environments is posing particular challenges to user autonomy and authorship. With ever broadening definitions of intellectual property rights the status of cultural and symbolic artifacts as products of collaborative efforts becomes increasingly problematized. In the case of virtual environments – such as massive multiplayer online role-play games – where users develop identities, bodies (avatars) and communities the stakes are quite high. This analysis draws on several case studies to raise questions about the status of culture and authorship in these games.

Keywords

Avatars, Internet, virtual environments, games

INTRODUCTION

While the history of virtual environments has so far been primarily written with an eye toward either the text-based worlds of MUDs or social graphical spaces like *Active Worlds* and *VZones/WorldsAway*, massive multiplayer online

role playing games (MMORPG) have dramatically popularized virtual worlds [1]. The MMORPG genre now boasts hundreds of thousands of users and accounts for millions of dollars in revenue each year [2]. While multiplayer games are at their most basic level simply that, a game, they should be more richly seen as spaces in which users come together online and invest enormous amounts of time inhabiting a virtual space, creating characters, cultures, and communities, gaming together, making dynamic economies, and exploring elaborate geographical terrain. As with many online subcultures, games are coming to make up some of the most interesting interactive computer-mediated spaces and with continued developments toward further networked activity (even in the realm of console gaming) this is likely to continue.

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While past multiplayer gaming spaces like text-based MUDs were built around non-commercial models and often on freeware systems, many of today's most popular online games are owned and operated by major corporations. Sony, for example, runs one of the largest games, *EverQuest*, while Microsoft operates another named *Asheron's Call*. The move to commercialized virtual environments is presenting some unique challenges to the negotiations users are making between their private lives and corporate interests. In this paper I suggest that we need to be engaged in critical inquiry about these developments as they are setting precedent and tone for a future Internet in which spaces and experience come to be mediated primarily through commercialized systems of authorship and exchange.

In this analysis, I draw on several cases presently being debated (both in the gaming community and the courts), as well as on my two year ethnography of Sony's *EverQuest*. I am particularly interested in examining how issues of corporate ownership and control are being struggled with both amongst individual users and their gaming communities. In particular, I will focus on several recent events in the massive multiplayer online gaming world to examine the challenges commercialization presents to both user experience and the organic cultures that emerge in virtual environments [3].

Rather than taking gaming *activity* as my starting point, I analyze MMORPGs first as dynamic communities in which users are living and embodying. Game play itself becomes one of many activities users engage in and play is in turn made up of a complicated mix of social and instrumental actions. Once these games are seen as an embodied social world that incorporates elements of play but extends beyond a narrow definition of game-space, a range of new issues then emerge around the status of both the culture of that world and the autonomy of its inhabitants. While it is common (and easy) to dismiss spaces like *EQ* as simply a game, this kind of reduction overlooks the thornier problems that arise when culture, communities, and commerce intersect.

CULTURE MATTERS

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One of the most significant issues to be considered in this discussion is the status of culture. Given the current climate of widespread extension of authorship rights (via trademarks, copyrights, and patent holdings) one might begin to consider how much of our general culture individuals any longer have access too. What is the status of public space and its domain in virtual environments? Coombe, in her consideration of the corporate ownership of culture presents a compelling analysis of the consequences of the commercialization of symbolic space. She writes that "increasingly, holders of intellectual property rights are socially and juridically endowed with monopolies over public meaning and the ability to control the cultural connotations of their corporate insignias (trademarks being the most visible signs of their presence in consumer culture)" [4].

While the preservation of the rights of authors is certainly an important standard to be upheld, the balance has lately turned to something more along the lines of the overextension of those rights. The romantic notion of the single author, whose work is preserved through property rights and whose enthusiasm for further creative contributions is fanned, seems to be increasingly surpassed by authorship via corporate agents. As Boyle suggests, this rhetoric is powerful and makes supporting these narrow rights claims easier. As he puts it, "A striking feature of the language of romantic authorship is the way it is used to support sweeping intellectual property rights for large corporate entities. Sony, Pfizer, and Microsoft tend to lack the appeal of Byron and Alexander Fleming" [5]. The space of public domain is increasingly diminished with the extensions given to the life of copyrights and the ability for individuals to reappropriate symbols for critique, or even satire, has been almost fatally wounded. Coombe provides a multitude of examples of the ways our everyday symbolic lives have come to be dominated by a sea of trademarks and copyrights. Branding has assumed such a prominent role in our cultural lives that it becomes difficult to imagine spaces not touched in some way by corporatized signs. Stories abound of cease and desist orders being sent for unauthorized usage of Disney characters, Barbie dolls, Benetton ad imagery and the like. More recently this kind of symbolic turfwar has extended into the digital realm where c&d orders are doled out quite liberally [6]. Unfortunately, when an average person receives such an order the prospect of challenging it may be both financially and imaginatively impossible. We are then left in a cultural space in which people have very little say in shaping the artifacts they find in their daily visual and aural lives and simultaneously are prevented from using or reappropriating those symbols.

It is not difficult to see that the terrain of culture is now a battlefield in which corporate "authors" vigorously monitor the use of their symbols and are granted wide latitude in "protecting" their property. But we might ask if there is some point at which artifacts, images, and symbols move from the narrow domain of single ownership into a sphere where we recognize they

are meaningful only through participation in the public, the social [7]. And if in fact artifacts are introduced into everyday culture in a way that intends them to be persistent and pervasive, do people have any right to reinterpret those symbols, to lay claim to them in some form?

While file sharing networks like *Napster* and *Gnutella* have brought property and ownership debates to the foreground, similar battles are also taking place in the emerging world of computer games. In many ways game spaces indeed make material these deep tensions now endemic to daily offline life. What is the jurisdiction of the ownership of artifacts however when we are speaking about a person's avatar – digital body – or their identity? Is there a way in which the daily dynamic culture of a game space like *EverQuest* can be seen as significantly constituted through the labor of the players? If so, what rights are attendant with such a formulation? What is the status of culture in such spaces, especially when that culture intersects with commercial interests? Do users have any meaningful stake or say in what constitutes their game space? What kinds of responsibilities might corporations be seen as holding when they are framed as the primary lifeworld managers for thousands of people on a daily basis? Digital media has been clearly posing challenges to legal considerations of property and rights. It has also brought into view the often hidden relationships between corporate owners, content producers, and consumers. MMORPGs offer a particularly unique venue in which to explore some of these themes but, I would argue, with even higher stakes.

To explore some of these issues we can turn to several instructive case studies. It is important to note that this matter is neither settled philosophically within the game community nor legally. There is wide-ranging debate about things as diverse as “the rights of avatars” and the ownership status of gaming artifacts. I present the following stories as initial explorations in what is sure to be a widely debated (at least one hopes) issue. Given the predictions that networked spaces and online games are likely to grow dramatically in the next several years I would propose these case studies represent early reports from the field – glimpses of what we are likely to encounter over the next few years. So far it is major corporate stakeholders that continue to have the dominant voice in this debate and they have been powerful in shaping legislation to their advantage. I offer the following case studies as a way of trying to begin a conversation amongst a broader range of participants including not only users but designers and critical social theorists. It is my hope that the inclusion of such voices might contribute to a more nuanced discussion, one that seeks to recognize the value of original work but also works to locate the artifacts of digital life in a more progressive political and theoretical framework.

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SELLING SWORDS, SELLING BODIES

In April of 2000 Sony Entertainment secured cooperation with the Internet auction houses eBay and Yahoo! to prevent *EverQuest* users from selling

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either game characters (accounts) or in-game goods. Up until that time a sort of "cottage industry" had sprung up in which users were turning their online labor into offline cash [8]. If you had visited eBay prior to April and done a search for *EverQuest* you would have found a wide variety of items available. Equipment such as armor, weapons, spells, and even coins could be bought and sold. More provocative I would suggest was the buying and selling of bodies through user accounts. Auction descriptions such as "Awesome Dark Elf Necro!" or "The Most Well Rounded Account of the Year" would appear, quite often with impressive screenshots of that avatar in all its gear.

If you bid high enough you could walk away with not only a new body (via a new *EQ* account), but a new identity. You could in fact buy your way around quite a few hours of developing that character, gaining levels, and perfecting game skills. Indeed, many in the *EQ* community itself find this one of the most loathsome aspects of what are now commonly termed "eBayers" (users who have bought loaded accounts/characters but have no real game skill and have not "paid any dues"). While the *EQ* community has had one set of reasons to often scorn this practice, Sony/Verant had quite another. One of the major problems with allowing users to buy and sell player accounts is it short-circuits the economic model that is the lifeblood of many commercial virtual environments – subscriptions. *EverQuest* users pay a monthly fee to play the game for unlimited hours. One of the primary ways to "succeed" at the game is via leveling – gaining experience through quests and, most commonly, fighting monsters in the world. While it is hard to say what the average time is for users to level characters up (60 currently being the highest level), it can take months which translates into subscription fees. If users can bypass the long process of leveling though and simply hit eBay to purchase high-level characters or equipment that might require a fair amount of gameplay to normally secure, the economic repercussions reverberate.

It is important here to note that the economic stakes are certainly not the only reason designers and corporate game sponsors might have for prohibiting auctioning. Jessica Mulligan has suggested that stating such prohibitions through the End User License Agreement (EULA) can help protect a company like Sony/Verant from enormous amounts of hassle when scams take place through auction houses [9]. Indeed one might also make a strong case for the ways the integrity of the gameplay is damaged by such end-runs. For example, the economy of the game itself might be altered by these external market forces [10]. More importantly though spaces which rely on reputation systems and social connections (as *EQ* does) to facilitate cooperative gameplay may indeed be undermined by auctioning. A strong case can probably also be made for the ways having to progress on your own builds game skills central to the future play and enjoyment. My point here is not to dispute that there are serious problems introduced into the game via auctions but to suggest that the financial component (and its implications) cannot be overlooked. Of course, as is often the case lately the issue was framed as one specifically about property rights. In a *CNet News.com* article Kevin Pursglove, a spokesman for eBay is quoted as saying that

EverQuest joined the companies VeRO program, which stands for Verified Rights Owners program. VeRO members list items that they own the property rights to. Should they find an auction selling items that a member believes violate their property rights, eBay will shut down the auction. [11, 12]

The ban is particularly instructive, as is both auction houses stated compliance with the request. Users had been engaged in auctioning, for “real-world” cash, their EQ characters, items, and entire accounts. The ban on the practice initiated a move to regulate not only the boundaries around a kind of virtual property but broader claims on the autonomy of players. To further complicate the issue the matter of how the game facilitates for in-game buying and trading must be considered. The game formally provides the ability for players to give each other items and coins via a trade window. In addition, players are able to participate in a zone-wide auction channel where they can advertise items they have for sale. EQ does not then wholesale prohibit the transfer of items and even supports an economy via mechanisms like auction channels. This makes more pronounced the ambiguity of the offense. Is it that users are obtaining items outside of a definition of appropriate gameplay or that some are profiting from it? And that indeed that profit is not simply in “virtual” money (as any longtime player is likely to have acquired through normal buying and selling over the course of gameplay) but *actual* money?

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Such questions have prompted the game community (both designers and users) to debate a range of questions. How much of a right do users have to artifacts they invest enormous amounts of time securing? Do they have any claim on a given character or account? Outside of any individual player’s time the account is in fact devoid of meaning. It takes a player to create a character and it takes the time of the player to develop that character. Through their labor they imbue it with qualities, status, accomplishments. Indeed, while the owners of a game provide the raw materials through which users can participate in a space, it is in large part only through the labor of the players that dynamic identities and characters are created, that culture and community come to grow. One of the main issues the auction ban highlights is the impoverished view of the ways culture and community are formed. The *collective* construction of the space is key but typically overlooked by narrow formulations. It is not simply the objects themselves that exist in the space, but the time and meaning that support them. Indeed, those who argue for the legitimacy of auctions have turned to claiming that what is actually being sold is the time any given player invests in obtaining an item, not the item itself. Certainly this now commonly seen auction disclaimer can sound like simply an attempt to find a loophole or hairsplitting. I do think however it helps illuminate the often frustratingly ambivalent status of debate.

While it is certainly the case that some users operate from just as limited a view of culture production (claiming they have total right to do whatever they want with their accounts and not paying serious attention to the role of game designers and managers in the construction of their lifeworld) when the tilt comes from corporate owners it tends to carry full weight of their

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access to legal and judicial remedies. Individual users may try to assert digital property claims by auctioning accounts and artifacts but the systemic undermining of more nuanced notions of authorship can be located squarely in the corporate realm. The battle over user autonomy would not be nearly as worrisome if users were operating on a level playing field with the corporate owners they are wrangling with. More often than not though they are simply ill-prepared to challenge the deeply embedded notions of romantic authorship currently being supported by legal decisions and legislation. The cost of challenging the owner of a world, indeed the space in which your digital body and identity inhabit, has been borne out by users who have been banned from the game (generally without recourse and certainly never with the benefit of third-party mediators) and such examples travel quickly through the grapevine and across user bulletin boards serving as powerful reminders to other users about who has the ultimate say in defining the terms of participation.

Of course, the sticky point here is that such spaces are not only private and for profit, but based on voluntary participation. Many argue that game owners have every right to set any terms of service they want. This is not unfamiliar territory and computer games are laden with elaborate End User License Agreements and Terms of Service (TOS). *EverQuest* in fact requires you to accept their EULA each and every time you log into the game. In the most narrow sense users agree to play by the companies rules. We might ask however about the true legal validity of some of what is contained in EULAs and what it might mean to try and opt-out of systems that require our begrudging assent. Again, games make this imaginative point a bit difficult because it is easy to frame them as "simply games" but we increasingly live in a world in which opting out of technological systems is becoming more and more difficult (try eliminating a technology from your life for a week and see how you fare) and yet participation within them pushes us to accept structures we might oppose.

The continued maneuvers by all parties involved however clearly indicates the matter is far from settled. Users continue to sell *EQ* bodies, identities, and various objects, all the while hoping to escape legal consequences by saying they are simply selling their time, not actual items. Various server communities continue to debate the rights of players and social status categories have emerged around the practice. At the recent *Game Developer's Conference* one theme that emerged was around building games in which user-generated content is more prevalent. This has long been something designers have batted around and is often seen as providing a design model for building more interesting and dynamic spaces [13]. Kosak, in a recent article at *Gamespy* noted that this move will only continue to push at these questions. He writes, "Along those lines, sometime in the next five years, expect a couple of legal battles involving user-created content. If you create something spectacular within a game world, is that your property? Or does it belong forever to the game publisher? More importantly, who owns your online persona? Chew on that!" [14].

While there has not yet been a legal battle over *EQ* game auctions, the matter has been raised via another massive multiplayer, *Dark Age of Camelot* (DAoC). The suit against Mythic, owners of DAoC, by Blacksnow Interactive (BSI), an auction clearinghouse, has brought many of these issues into a formal legal battle. BSI contends that Mythic is trying to overextend its copyright by disallowing the sale of characters and objects (including money). Interestingly enough, the DAoC EULA frames it even more broadly, suggesting that “In addition to violating our agreement, selling items and/or coin violates our legal rights and may constitute misappropriate, and/or tortuous interference with our business and tarnishes the goodwill in the *Dark Age of Camelot*™ name.” Not surprisingly, BSI has responded by claiming that Mythic’s attempts to block their auctions represents an infringement on their legitimate activity and that such attempts represent unlawful business practices and unfair advantage. Interestingly BSI’s own “legal disclaimer & buyer’s agreement” they state that “Seller is only providing a service to the buyer. No goods or property are being sold to buyer by seller. Seller claims no title to any intellectual property interests held by Mythic Entertainment Corporation (Mythic).”

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The courts will certainly settle the matter (at least in the most instrumental sense) and many are predicting that BSI is likely to lose. I suspect this is an accurate prediction given the legal climate surrounding issues of intellectual property and more general regard for supporting corporate property claims. Whatever the outcome it is nonetheless good for the game community and cultural critics (two spheres that have more in common than might at first glance be apparent) to have the issues brought into sharp relief. One of the more fascinating turns however will be seeing how future design decisions and world management are handled.

FANFIC AND ORCS

The regulation of users off-site (out of game and non-game owner sponsored space) activities is similarly instructive on the question of user autonomy, corporate control and the nature of cultural authorship in game space. The case study of the banning of the *EverQuest* user Mystere raises provocative issues around the way individual users are negotiating a commercialized cultural sphere. It also highlights what might be seen as an odd juxtaposition in terms of the game’s own symbolic appropriations.

In 2000 a user going by the name of Mystere posted a piece of fan fiction to a website neither owned nor operated by Sony/Verant. This independent venue offered a place for users to share their written work (based around *EverQuest* characters and *EQ*-style elements) with others in a non-commercial setting. The content of the story is admittedly charged, involving the graphic rape of a character “in her 14th season” and subsequent revenge [15]. The fanfic remained on the board for three months until it came to the attention of *EQ* representatives. In a move that startled many in the game community,

Mystere's *EverQuest* account was closed and the fanfiction was subsequently pulled from its original site.

The justification for this action was defined quite broadly and spoke to not simply a concern with intellectual property but larger reputational considerations. Gordin Wrinn, one of the companies representatives posted on the matter, stating,

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We make determinations based on information at hand regarding who is or is not having a positive effect on *EverQuest's* community. If we determine that one person's actions make *EverQuest* a game that other people do not want to play based upon those actions, we will exercise our right to refuse service to the extent necessary to provide a reasonable and enjoyable gaming environment [16].

John Smedley, also of Sony/Verant Online, spoke with one of the major online game magazines and further clarified the companies position, saying, "In this day and age we are very concerned about the perception of online games to the mainstream public. What we don't need is people equating this story with *EverQuest* and therefore assuming this is the kind of stuff that everyone is involved in" [17]. Citing violations to their intellectual property and the production of "derivative work" Andrew Zaffron, general counsel for Sony Online Entertainment, made clear the companies belief that "Fortunately, the body of intellectual property law that has developed over the past 225 years – the laws governing the use of copyrighted material, derivative works, trademarks and trade dress – gives us the exclusive right to permit or disallow the outside use of our intellectual property so that we can properly manage our business and nurture the *EverQuest* brand" [18].

However, these kinds of claims against fan fiction may be problematic. Tushnet has argued for example that "the interest in the integrity of the characters is not an interest in market share, but a general reputational concern, which copyright law does not formally recognize" [19]. Others have suggested that the non-commercial nature of fan-fic puts them in a category of creative work that the law grants wider latitude to. The claims to have authority over reputation here are also quite striking and the practices that must be deployed to secure this kind of control could be quite pernicious [20].

Some who watched the unfolding of this story also noted what they saw as a distinctly hypocritical stance to Verant's position. It seemed to them to appear that *EQ* only allowed role-playing on their terms – that while Mystere's rough tale was troublesome and cause for alarm all the other quite violent and sexually explicit imagery in the world was permissible because it was *Sony/Verant's* violence. As Scott Jennings (Lum the Mad) wrote, "Regardless, and again, if the side of the story we're hearing is the truth, Verant banned someone for role-playing incorrectly [...] Everything is happy and perky, and most importantly, child-safe in Norrath. There is no evil whatsoever. Ignore the mutilated bodies of dwarves strewn liberally around Feerot. While you're at it, ignore the fact that while dark elven males default to a fully dressed outfit, dark elven women default to wearing skimpy bikinis" [21].

Ultimately the account of the writer *Mystere* remained banned [22]. While the company ended up apologizing for the way in which the matter was handled and even went so far as to suggest that they would not be monitoring fan fiction in the future, the precedent remains and the broader claims to control the image the game were never challenged.

It is important to note that the story was not posted on any Sony/Verant site and involved a mix of both original characters and story elements drawn from the game. As numerous articles suggest, the legal status of non-commercial fan fiction is certainly not clear and in fact may fall quite notably outside the claims of intellectual property typically used [23]. In many ways it was a classic piece of fan fiction which has a long media history. Fans have been actively appropriating television, movie, and comic book imagery for years now and creating entirely new cultural products through rewriting characters and storylines. Henry Jenkins, in his fascinating study of the subculture, states that “fans assert their own right to form interpretations, to offer evaluations, and to construct cultural canons. Undaunted by traditional conceptions of literary and intellectual property, fans raid mass culture, claiming its materials for their own use, reworking them as the basis for their own cultural creations and social interactions” [24].

As one user later wrote, the banning reverberated through the community and calls into question the relationship users have not only to fan fiction and *EQ*, but some of the broader questions of ownership of identity in this space.

While it is true that Verant partly enabled me to introduce Nep [the character's name] to *EverQuest* by using the computer code to decide on Nep's looks, her gender, her stats, her race, her class and her religion, that really is only a limited start to developing a character. In order to role-play my character, it is necessary to flesh her out. Beyond the effects given by the software code, it's up to me to figure out what to do with her [...] What the computer will not and cannot do though is create a role for Nep set in the Norrathian history and geography, nor can it give her personality, speech, connections and relationships. I am her creator and it is both through my play and pleasure to develop those aspects for her in game and to more thoroughly solidify her existence through the use of the traditional role-play tools of background stories, current tales of adventures, art, poems, etc... [25]

The act of appropriation is but one of many ways media consumers try to creatively work with and through the cultural artifacts they encounter. Indeed their reworkings highlight the ways the bits and pieces of culture are quite malleable, open to multiple interpretations, and in some ways “made real” only through engagement with audiences. The idea that one might regulate all aspects of a media product and try to control and contain its meaning runs directly against what sociological and anthropological studies of culture teach us.

This challenge to collaborative ownership is particularly striking when contrasted with *EverQuest's* own use of common symbolic terrain. In a world populated by orcs and halflings (each of which are the explicit property of the Tolkien estate [26]) and filled with images and storylines deeply rooted

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in various fantasy traditions, one can't help but wonder how it is *EQ* squares such a progressive practice of cultural authorship with their otherwise narrow claims of intellectual property [27]. One might also consider how *EQ*'s conventions of leveling, "rolling" for base statistics for characters, and other mechanics exist at this point as common game tropes deployed by a wide variety of games.

Quite interestingly, the use of established aesthetics and structures goes even deeper, to the very architecture of the system. Several astute MUD developers noticed early on that *EQ* appeared strikingly similar to a flavor of MUD called DIKU. Indeed even the underlying command structure for emoting is amazingly similar to many MUDs and the link between this newest version of a multiplayer space and its predecessors is readily apparent. After some investigation (and sworn affidavits) it was determined that the game was not explicitly built using DIKU sourcecode. It nonetheless retains its look and feel and in a move many corporate entities would be well served to learn from, the DIKU community said they saw this as a tribute to their platform, writing that "The DIKU group is proud that 'the DIKU feeling' has found its way into a game as enjoyable and award winning as *EverQuest*" [28].

EverQuest has quite reasonably drawn on existing symbols and conventions and to try and prohibit such forms of creative productive is absurd. Tushnet quotes Judge Kozinski of the Ninth Circuit on the matter of cultural production,

Overprotecting intellectual property is as harmful as underprotecting it. Creativity is impossible without a rich public domain. Nothing today, likely nothing since we tamed fire, is genuinely new: Culture, like science and technology, grows by accretion, each new creator building on the works of those who came before. Overprotection stifles the very creative forces it's supposed to nurture [29].

Rich gaming traditions are typically not lost on designers who can quite often trace back in detail how this game builds on that one or how elements from a classic are incorporated as homage into a new environment [30]. The hitch in the argument (and in world management practice) seems to be in extending the notion of collaborative cultural production to the *users*.

OWNER RESPONSIBILITY?

While we currently have much heavily weighting the power of corporate authorship claims, we have very little commensurate responsibility required. If indeed companies want to retain all the privileges of being primary owners of these worlds, do they then have corresponding sets of responsibilities to their userbase? Such an inquiry is especially provocative if the notion of these environments as lifeworlds is taken seriously. Should users have meaningful rights to shape the nature of representation in the world? Or the development of its culture and structure? Should game companies be meaningfully accountable to their users?

In my research on women and gaming I have found that there is a fair amount of frustration at game developers for not addressing user desires and critiques around representation [31]. Many women express frustration at the way their avatars look and have found themselves having to simply accept the avatar images – the bodies – they are given. This is especially important around issues of embodiment which intersects formulations about gender and race, I want to raise the question of whether or not game companies must bear a greater burden in responding to their userbase. While it is an easy path to simply claim full authorship, it is much more challenging to face potential responsibilities that would come from such a system. I do not want to argue here that cooperative ownership of game artifacts lets world developers “off the hook” or that we need virtual environments governed by paternalistic administrators “responsible” for their users. I do want however to raise an inquiry about whether or not the systems we see now are ones in which corporate owners want to have their cake and eat it too.

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CONCLUSION

Given the intense ways users are living and embodying themselves in these virtual environments, I argue that we need to develop more complex ideas about the life of digital cultural artifacts, collective authorship, and the autonomy of user experience. I am interested in proposing broader conceptions about the ownership of cultural artifacts and software. The current turn toward privileging corporate interests above the creative independent and collaborative work of users is setting up worrisome precedents.

While I have spent a good portion of my argument calling for a broader view of cultural production, to dismiss it as simply impossible given the “fact” of existing copyright law and notions of authorship would be shortsighted. If anything, we need clearer representations of the flexible nature of legal understandings and analysis grounded in a recognition that our current property regimes are historically mediated, contextually specific and not without politics. Boyle provides a fascinating historical context to the debate around authorship and property and traces the varied ways formulations come to be in dialogue with legal verdicts and legislation [32]. As Tushnet argues, the intent of copyright is for the promotion of culture and the benefit of the public. She writes:

People should be able to participate actively in the creative aspects of the world around them. When most creative output is controlled by large corporations, freedom to modify and elaborate on existing characters is necessary to preserve a participatory element in popular culture. Copyright’s purpose, after all, is to encourage creativity for the public interest, not only to ensure monopoly profits. [33]

Lessig further articulates the complications that arise when we enter the terrain of trying to over zealously protect property rights. He cautions us

to consider the implications of the control regimes we seem to be currently setting up, writing that

[W]e stand on the edge of an era that demands we make fundamental choices about what life in this space, and therefore life in real space, will be like. These choices will be made; there is no nature here to discover. And when they are made, the values we hold sacred will either influence our choices or be ignored. [34]

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EverQuest has boasted the tagline "You're in our world now" and over time many users came to cite this as summing up not simply the experience of virtual world immersion but a problematic management stance in which the definition of whose world it actually was, ended up negating valuable user experience and input [35]. These issues are certainly not lost on EQ administrators and developers (nor, as I mentioned at the beginning of this piece, on most game designers). My sense is there is earnest interest in working through these thorny matters in creative ways and in that regard I am hopeful about the possibilities the game design community itself can bring to the table. Raph Koster's "Declaring the Rights of Players" is both a provocative imagination of what rights might look like in virtual environments and a fascinating map of the various arguments [36]. Only with continued critical intervention though will the debate be assured of taking a truly broad form. Serious attention has to be given to the gap that may exist between design desires and corporate interest in the given models of property and authorship. Given their access to the tools and raw materials out of which these worlds are built, it is my hope designers challenge themselves to envision creative possibilities and solutions to build technological systems that foster rich formulations of culture, identity, body, and community.

NOTES

This paper is intended as an initial inquiry into the subject of cultural production and authorship in massive multiplayer online RPGs. The author would be grateful for any comments, criticisms, or suggestions. Since further development of the argument, updates on pending legal cases, and additional citations and case studies are forthcoming, the author requests that she be contacted (tlaylor@ncsu.edu) before quoting or citing this work.

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2. Asher, M. "Massive (Multiplayer) Entertainment: Playing Together Online – Yesterday." *Computer Games Online*, 2001. 25 January 2002. <http://www.cgonline.com/features/010717-fl-fl.html>; Morrison, J. Homeward Bound. *Context Magazine*, 2001. 14 April 2002. <http://www.contextmag.com/archives/200106/Feature4HomewardBound.as>
3. An important disclaimer to make here is that I will be focusing on U.S. legal and political conventions and its very specific culture of upholding corporate claims to authorship and intellectual property. I am anxious to hear international comparisons and hope that this piece serves as an opening inquiry for the discussion.
4. Coombe, R.J. *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*. Duke University Press, Durham, 1998, p.26.
5. Boyle, J. *Shamans, Software, & Spleens: Law and the Construction of the Information Society*. Harvard University Press, Cambridge, 1996, p.xiii.
6. See the website Chillingeffects.org for an impressive collection of both such letters and various legal FAQs on the subject.
7. As Coombe puts it, "one could argue that if the public creates meanings for Barbie in excess of the signifiers capacity to signal Mattel's toy, they have done the sowing and thus they should do the reaping" (p. 67).
8. Mulligan notes this is not a new phenomenon but dates back to the 1980s and earlier games like *Gemstone III* and *Dragon's Gate*. Mulligan, J. "EULAquest: Part 1." *happypuppy.com*. 19 April 2000. <http://www.happypuppy.com/features/bth/bth%2Dvol9%2D11.html>.
9. Though it is probably worth imagining that an EULA could warn customers that the parent company cannot be held responsible for the results for auctions vs. banning them outright.
10. For a fascinating study on the economy of Norrath (the land *EverQuest* is set in) see E. Castronova, "Virtual Worlds: A First Hand Account of Market and Society on the Cyberian Frontier," *The Gruter Institute Working Papers on Law, Economics, and Evolutionary Biology*, v.2 issue 1, 2001.
11. Sandoval, G. "eBay, Yahoo Crack Down On Fantasy Sales." *CNet News.com*, 26 January 2001. <http://news.com.com/2100-1017-251654.html>.
12. One of the more fascinating cases I ran across in the literature is one cited by Tushnet and involves the modification of game characters. She cites a case in which "one court has recognized that enabling consumers to play with and alter video-game characters has the potential to improve the market for the official product. In *Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.*, the Ninth Circuit held that a computer program that allowed Nintendo players to change character attributes was a fair use, in large part because it had the potential to improve the market for the original by adding variety to it" (p. 17).
13. MUD wizards have long worked with their userbase to build environments and there are likely to be some valuable lessons to find in that scene.
14. Kosak, D. "What's This World Coming To? The Future of Massively Multiplayer Games." *Gamespy.com*. 17 April 2002. <http://www.gamespy.com/gdc2002/mmog/>.

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15. The significance of this phrase was debated by users – did it mean 14 levels, in which case the age could be anything or did it mean 14 years old? The author himself finally addressed it in an interview with Jon Goodwin of *Joystick101.com*, saying, "The word was absolutely NOT child porn. First off, as I have always said, fantasy settings are generally viewed as being from medieval or the Renaissance period. During this period of time in real life, 14 years old was quite old enough to have been married off and have at least one child [...] Basically, in the setting give, the girl wasn't a "girl" but a young woman. Also, it is quite clearly stated that the villain in the story is doing something illegal, even in his 'evil' society." J. Goodwin, "Banned for Roleplaying: An Interview with Mystere," *Joystick101.org*, 9 November 2000. <http://www.joystick101.org/?op=displaystory&sid=2000/11/3/74932/4052>.
16. Mulligan, J. "Mommy, She Talked Dirty!," *happypuppy.com*, 12 October 2000. <http://www.happypuppy.com/features/bth/bth-vol9-28.html>.
17. Parker, S. "Verant Q & A," *GameSpot*, 10 October 2000. <http://gamespot.com/gamespot/filters/printerfriendly/0,10855,2638977-95,00.html>.
18. Mulligan, 12 October 2000, p. 3.
19. Tushnet, R. "Legal Fictions: Copyright, Fan Fiction, and a New Common Law." *Loyola of Los Angeles Entertainment Law Journal*, v.17, 1997. This can be contrasted to trademark law which she states "does recognize reputational concerns, but copyright's special solicitude for parody demonstrates that its concern for creativity requires a different kind of analysis" (p. 22).
20. Tushnet argues that, "Fundamentally, the issue of character integrity is a dispute about how much control companies should exercise over how their images are received. If a line is not drawn at noncommerciality when it comes to creative re-use of characters, then a fan's daydream is theoretically as illegitimate as the story she posts on the Web" (p. 22).
21. Mulligan, 12 October 2000.
22. It is actually quite striking how much both the author and owner of an *EQ* fan fiction site expressed understanding for Verant's position and appear to accept and internalize the reputational argument. Goodwin quotes Mystere as saying, "I feel that the initial response was heavy-handed. While I understand the need to protect a company's image from social depravity (assuming, of course, a fiction story could be considered socially depraved), I always like to work things out on an individual basis." Safka Fairheart, the host of the fanfic space *Safka's Lore*, wrote "They [*EQ*] will not pursue authors for breach of intellectual copyright, (which is what we were concerned about), but they will be forced to consider their options should the boundaries of good taste be crossed by any given piece of *EQ* fiction. That we feel, is fair enough, that is their right, they have to act to protect their brand image." Fairheart, S. "Safka's Lore Re-Opens!" *EverQuest Vault*, 11 October 2000.
23. See for example Tushnet, R. "Legal Fictions: Copyright, Fan Fiction, and a New Common Law," *Loyola of Los Angeles Entertainment Law Journal*, 17 *Loy. L.A. Ent. L.J.* 651, 1997; Madow, M. "Private Ownership of Public Image: Popular Culture and Publicity Rights," *California Law Review*, 81 *Calif. L. Rev.* 125, January 1993; Tussey, D. "From Fan Sites to Filesharing: Personal Use in Cyberspace," *Georgia Law Review*, 35 *Ga. L. Rev.* 1129, Summer 2001.
24. Jenkins, H. *Textual Poachers: Television Fans & Participatory Culture*, Routledge: New York, 1992, p. 18.

25. Nepenthia. "Roleplay and Intellectual Property." *Stratics*, issue 144, Oct. 7-13, 2000. <http://express.stratics.com/Issue144/intproperty.htm>, p. 1.
26. Tolkien Enterprises lists a variety of "fanciful names" (available at <http://www.tolkien.com/new/names.html>) and asks anyone wishing to use one or more to submit a written "proposal" to the director of licensing.
27. The lineage is even further complicated by the fact that some note parts of Tolkien's imagery itself has links back to Celtic myths and old folklore.
28. DIKU MUD Homepage. <http://www.dikumud.com/diku/EverQuest.asp>.
29. Tushnet, p. 9.
30. See Asher, M. "Massive (Multiplayer) Entertainment: Playing Together Online-Yesterday," *Computer Games*, 17 July 2001, <http://www.cgonline.com/features/0100717-fl-fl.html>; Burka, L. "MUD Timeline," <http://www.apocalypse.org/pub/u/lpb/muddex/mudline.html>; Damarr, "The History of the MMORPG," *Stratics*, 8 October 2001, <http://www.stratics.com/content/editorials/editorials/history.shtml>; Koster, R. "Online World Timeline," <http://www.legendmud.org/raph/gaming/mudtimeline.html>.
31. Taylor, T.L. "Multiple Pleasures: Women and Online Gaming." Manuscript under review, 2002.
32. Boyle, 1996.
33. Tushnet, p. 29.
34. Lessig, L. *Code and Other Laws of Cyberspace*. Basic Books, New York, 1999, p.220.
35. EQ designers are some of the more thoughtful around and they certainly spend a good deal of time not only thinking about gameplay (and game "balance") but trying to articulate those decisions to the userbase. Typically termed "the vision" (as in the meta-vision of gameplay) this phrase has also been reframed by some users into the tagline "Victims of The Vision™."
36. Koster, R. *Declaring the Rights of Players*. 27 August 2000. <http://www.legendmud.org/raph/gaming/playerrights.html>.

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