

**From Jack M. Balkin and Beth Simone Noveck, eds., *The State of Play: Law and Virtual Worlds***

Chapter

*Declaring the Rights of Players*

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Do players of virtual worlds have rights?

One of those questions that I shouldn't write about. No matter what, any answer I give is bound to be wrong, either from the perspective of my employers or my customers. The pesky thing about rights is that they keep coming up. Players keep claiming that they have them. Of course, administrators of any virtual space are loathe to "grant players rights" because it curbs their ability to take action against people and holds them to standards they may not be able to live up to.

There's at least one theory of rights which says that rights aren't "granted" by anyone. They arise because the populace decides to grant them to themselves. The flip side of this is that unless you continually fight to make that claim true, then it won't stick. The battleground is not a military one: it's a perception one; as long as everyone is convinced that people have rights, they do. And, of course, as long as they are enshrined in some sort of law. In other words, the guys in charge sign away a chunk of power, in writing, that the populace expects them to sign away.

There's another theory of rights which holds them to be intrinsic to people. Under this far more rigid standard, all those cultures which fail to grant them are benighted bastions of savagery. The harder part here is agreeing on what rights are intrinsic to all people everywhere.

Many mud admins are of the belief that their muds are their private playgrounds. That they have discretion on how enters and who gets to stay. That they can choose to eject someone on any grounds whatsoever, can delete a character at a whim, can play favorites and choose to grant administrative favors to their friends. Even in pay-for-play circles, it is always made very clear who owns the data, who has to sign Terms of Service, etc.

It's pretty clear that there are some rights which leak over from the real world into the virtual. If your local pay-for-play mud operator isn't providing adequate service, you can report them to the Better Business Bureau; there are probably laws that apply equally well in both kinds of space. But rights (and much less legislation) have not caught up to the notion of virtual spaces very well. Which makes for an interesting thought experiment.

What if we declared the rights of avatars?

I've based what follows on a couple of seminal documents: The *Declaration of the Rights of Man and of the Citizen* approved by the National Assembly of France on August 26 of 1789; and *the first ten amendments to the Constitution of the United States*, perhaps better known as *the Bill of Rights*. This is, perhaps, not the best basis from which to begin a stab at this hypothetical exercise, given our multicultural world today; some have suggested that a better starting point might be the *United Nations Charter of Rights and Freedoms*. I admit that one reason for choosing the version I did was its language, not its content per se.

So let's give it a whirl. This is all still hypothetical, OK?

### A Declaration of the Rights of Avatars

When a time comes that new modes and venues exist for communities, and said modes are different enough from the existing ones that question arises as to the applicability of past custom and law; and when said venues have become a forum for interaction and society for the general public regardless of the intent of the creators of said venue; and at a time when said communities and spaces are rising in popularity and are now widely exploited for commercial gain; it behooves those involved in said communities and venues to affirm and declare the inalienable rights of the members of said communities. Therefore herein have been set forth those rights which are inalienable rights of the inhabitants of virtual spaces of all sorts, in their form henceforth referred to as avatars, in order that this declaration may continually remind those who hold power over virtual spaces and the avatars contained therein of their duties and responsibilities; in order that the forms of administration of a virtual space may be at any time compared to that of other virtual spaces; and in order that the grievances of players may hereafter be judged against the explicit rights set forth, to better govern the virtual space and improve the general welfare and happiness of all.

Therefore this document holds the following truths to be self-evident: That avatars are the manifestation of actual people in an online medium, and that their utterances, actions, thoughts, and emotions should be considered to be as valid as the utterances, actions, thoughts, and emotions of people in any other forum, venue, location, or space. That the well-established rights of man approved by the National Assembly of France on August 26th of 1789 do therefore apply to avatars in full measure saving only the aspects of said rights that do not pertain in a virtual space or which must be abrogated in order to ensure the continued existence of the space in

question. That by the act of affirming membership in the community within the virtual space, the avatars form a social contract with the community, forming a populace which may and must self-affirm and self-impose rights and concomitant restrictions upon their behavior. That the nature of virtual spaces is such that there must, by physical law, always be a higher power or administrator who maintains the space and has complete power over all participants, but who is undeniably part of the community formed within the space and who must therefore take action in accord with that which benefits the space as well as the participants, and who therefore also has the rights of avatars and may have other rights as well. That the ease of moving between virtual spaces and the potential transience of the community do not limit or reduce the level of emotional and social involvement that avatars may have with the community, and that therefore the ease of moving between virtual spaces and the potential transience of the community do not in any way limit, curtail, or remove these rights from avatars on the alleged grounds that avatars can always simply leave.

#### Articles:

1. Avatars are created free and equal in rights. Special powers or privileges shall be founded solely on the common good, and not based on whim, favoritism, nepotism, or the caprice of those who hold power. Those who act as ordinary avatars within the space shall all have only the rights of normal avatars.
2. The aim of virtual communities is the common good of its citizenry, from which arise the rights of avatars. Foremost among these rights is the right to be treated as people and not as disembodied, meaningless, soulless puppets. Inherent in this right are therefore the natural and inalienable rights of man. These rights are liberty, property, security, and resistance to oppression.
3. The principle of all sovereignty in a virtual space resides in the inalterable fact that somewhere there resides an individual who controls the hardware on which the virtual space is running, and the software with which it is created, and the database which makes up its existence. However, the body populace has the right to know and demand the enforcement of the standards by which this individual uses this power over the community, as authority must proceed from the community; a community that does not know the standards by which the administrators use their power is a community which

permits its administrators to have no standards, and is therefore a community abetting in tyranny.

4. Liberty consists of the freedom to do anything which injures no one else including the weal of the community as a whole and as an entity instantiated on hardware and by software; the exercise of the natural rights of avatars are therefore limited solely by the rights of other avatars sharing the same space and participating in the same community. These limits can only be determined by a clear code of conduct.
5. The code of conduct can only prohibit those actions and utterances that are hurtful to society, inclusive of the harm that may be done to the fabric of the virtual space via hurt done to the hardware, software, or data; and likewise inclusive of the harm that may be done to the individual who maintains said hardware, software, or data, in that harm done to this individual may result in direct harm done to the community.
6. The code of conduct is the expression of the general will of the community and the will of the individual who maintains the hardware and software that makes up the virtual space. Every member of the community has the right to contribute either directly or via representatives in the shaping of the code of conduct as the culture of the virtual space evolves, particularly as it evolves in directions that the administrator did not predict; the ultimate right of the administrator to shape and define the code of conduct shall not be abrogated, but it is clear that the administrator therefore has the duty and responsibility to work with the community to arrive at a code of conduct that is shaped by the input of the community. As a member of the community himself, the administrator would be damaging the community itself if he failed in this responsibility, for abrogation of this right of avatars could result in the loss of population and therefore damage to the common weal.
7. No avatar shall be accused, muzzled, toaded, jailed, banned, or otherwise punished except in the cases and according to the forms prescribed by the code of conduct. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished, even if said individual is one who has been granted special powers or privileges within the virtual space. But any avatar summoned or arrested in virtue of the code of conduct shall submit without delay, as resistance constitutes an offense.

8. The code of conduct shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted according to the provisions of a code of conduct promulgated before the commission of the offense; save in the case where the offense endangered the continued existence of the virtual space by attacking the hardware or software that provide the physical existence of the space.
9. As all avatars are held innocent until they shall have been declared guilty, if detainment, temporary banning, jailing, gluing, freezing, or toading shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by the code of conduct.
10. No one shall be disquieted on account of his opinions, provided their manifestation does not disturb the public order established by the code of conduct.
11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every avatar may, accordingly, speak, write, chat, post, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by the code of conduct, most particularly the abuse of affecting the performance of the space or the performance of a given avatar's representation of the space.
12. The security of the rights of avatars requires the existence of avatars with special powers and privileges, who are empowered to enforce the provisions of the code of conduct. These powers and privileges are therefore granted for the good of all and not for the personal advantage of those to whom they shall be entrusted. These powers and privileges are also therefore not an entitlement, and can and should be removed in any instance where they are no longer used for the good of all, even if the offense is merely inactivity.
13. A common contribution may, at the discretion of the individual who maintains the hardware, the software, and the data that make up the virtual space, be required in order to maintain the existence of avatars who enforce the code of conduct and to maintain the hardware and the software and the continued existence of the virtual space. Avatars have the right to know the nature and amount of the contribution in advance, and said required contribution should be equitably distributed among all the citizens without regard to their social position; special rights and privileges shall never pertain to the

avatar who contributes more except insofar as the special powers and privileges require greater resources from the hardware, software, or data store, and would not be possible save for the resources obtainable with the contribution; and as long as any and all avatars are able to make this contribution and therefore gain the powers and privileges if they so choose; nor shall any articles of this declaration be contingent upon a contribution being made.

14. The community has the right to require of every administrator or individual with special powers and privileges granted for the purpose of administration, an account of his administration.
15. A virtual community in which the observance of the code of conduct is not assured and universal, nor the separation of powers defined, has no constitution at all.
16. Since property is an inviolable and sacred right, and the virtual equivalent is integrity and persistence of data, no one shall be deprived thereof except where public necessity, legally determined per the code of conduct, shall clearly demand it, and then only on condition that the avatar shall have been previously and equitably indemnified, saving only cases wherein the continued existence of the space is jeopardized by the existence or integrity of said data.
17. The administrators of the virtual space shall not abridge the freedom of assembly, save to preserve the performance and continued viability of the virtual space.
18. Avatars have the right to be secure in their persons, communications, designated private spaces, and effects, against unreasonable snooping, eavesdropping, searching and seizures, no activity pertaining thereto shall be undertaken by administrators save with probable cause supported by affirmation, particularly describing the goal of said investigations.
19. The enumeration in this document of rights shall not be construed to deny or disparage others retained by avatars.

Lofty, eh? And I don't doubt that there's some folks out there right now seizing on this as an important document. For all I know, maybe it is.

But there's also some other folks who think that this exercise is plain dangerous. As an example, let me take a co-worker of mine to whom I showed an early draft. He pointed out that virtual world servers run on somebody's hardware. And that most declarations of rights give

rights over personal property. By declaring that avatars have rights, we're abrogating that administrator's right to personal property.

Others point out that it's superfluous. After all, if virtual worlds are just extensions of the real world, then surely all the rights we already have apply?

What about if the virtual space in question is a game? Doesn't it, by its nature, obviate some of these rights?

And the biggie: what if you don't accept the basic premises in the prefatory paragraphs?

And that's where it gets interesting: in the details. I posted the document to a mailing list with a collection of the smartest virtual world admins and designers I know. Here's some of the various comments from admins who got to see the original draft of this document (names hidden to protect the innocent, and remarks vastly paraphrased, because many of the objections were hypothetical ones).

- Rights of *avatars*? Why not of "chess pieces"? Maybe the players have rights, but avatars are just representations.
- I have not signed any agreement to keep the mud running, and I have no responsibility towards the players. In fact, I might have made *them* sign an agreement saying so!
- What if the players don't want to accept their rights?
- You could arguably consider online actions merely speech, and therefore bound by those standards.
- You've left all sorts of abuses available by justifying them as "necessary for the world's survival."
- I don't believe in the notion of a social contract. Rights are granted explicitly by those in power.
- "Why should the creator of an online community--especially one which is created explicitly for the purpose of entertainment--be bound to do certain things simply because others have chosen to make an emotional or social investment in his/her construct?" (A direct quote).
- You just defined "the aim of virtual communities." That's not liberating, that's severely limiting!

- Property, freedom from oppression--these are pretty Western rights, you know. Are we dragging Western ideology into primacy in the virtual setting here?
- The one real right players incontrovertibly have is the right to log off.
- What about the notion that anything an admin orders you to do is by definition, the law?
- This really curtails the freedom admins have to police things. I have better things to do than try to anticipate everything a player might do.
- What about games where arbitrary orders are part of the rules? As a simple example, what about "Simon Says"? Or where no freedom of speech, or a corrupt government (even one that players can take on significant roles in) is part of the fictional game setting?
- Doesn't this prevent a community from selectively appointing admins, coders, whatever, since it requires that anyone who can make the contribution be allowed to?
- Does this mean that the game admins cannot sell a superpowered item for cash money to players?
- And do these really apply to the guy with his finger on the power button? He is unbannable, after all.
- Bad players should have less rights than good ones!

A final comment, because it's priceless:

"If I were the United States Secretary of Virtual Worlds and I were shopping around for an administration policy for USMud I would start with something like this. If I were Joe Businessman, I might pay lip-service to this, but I sure as heck wouldn't put it in my user contract and leave myself open to lawsuits."

Perhaps the most interesting thing about all the admin commentary on the document is that the biggest concerns boil down to just a few things:

1. I don't want to surrender control. I hate the notion of "rights" for players.
2. I may not be making this sort of virtual world. Maybe it's a game. (Which is largely easily answered by saying, "these rights apply out of character, not in character, of course.")
3. By the way, I *really* don't want to surrender control.

The second is interesting. It raises the question of what a mud is for, and what lifecycle it has. Common wisdom has it that "a mud must grow, or stagnate and die." If so, then the common good means anything that works against increasing the population of a mud. However, a mud that grows into something which all of its members despise is not developing towards the common good. So a better definition might be, the common good is that which increases the population of a mud without surrendering core social tenets or mores. But that word "stagnate" is in that bit o' common wisdom too. So it may be good for a mud to evolve its core social tenets in order to adapt to the changing population.

When all is said and done, though, I am clearly defending something completely implausible on one key level:

- as a document for players, it's a waste of time. They may trumpet it, but who cares? They have zero power, and the document actually states that several times over.
- as a document for admins, however, it's pretty much all common sense. Whether or not you believe in *any* of the principles that lead to calling these articles rights, or whether or not you believe in rights at all, you probably subscribe to most of these out of sheer, ruthless practicality and business horse sense.

What happens if we remove the word rights, and in fact remove all the high-flown language?

#### Advice to Virtual World Admins

Mud players are people. They don't stop being people when they log on. Therefore they deserve to be treated like people. This means they have the rights of people. By joining a mud, they join a community of people. Rights arise from the community. But there's always someone with their finger on the power switch. But he's part of the community too, and should use his powers for the common good and the survival of the community. The fact that you can easily move to another mud doesn't mean that these rights go away.

Articles:

1. All mud players get the same rights. Special powers on the mud are given out for the good of the mud, not because some guy is the friend of a wizard.

2. Mud players are people, and therefore they have the rights of people: liberty, property, security, and freedom from oppression.
3. Somewhere, there's a guy with his finger on the power button. What he says ultimately goes. The mud players have the right to know the code of conduct he is going to enforce over them, and what rules and standards he's going to use when he makes a decision. Otherwise, they are suckers and deserve what mistreatment they get.
4. You can do whatever you want as long as it doesn't hurt others. "Hurting others" needs to be defined in the code of conduct.
5. The code of conduct shouldn't be capricious and arbitrary. The rules should be based on what is good for the mud (and for the good of the mud's hardware, software, and data).
6. The code of conduct should evolve based on the way the mud culture evolves, and players should get a say in how it evolves. The mud admins get to write it however they want, but they have an obligation to listen or else the players might leave.
7. You can't punish someone for something that isn't the code of conduct. Abusing your wiz powers is a serious crime. If you are caught in a violation of the code of conduct, fess up.
8. You can't punish someone in a way not in the code of conduct, and you the admin don't get to rewrite the code of conduct after the fact to make it legal. The only exception is action taken to keep the mud from going "poof."
9. Players are innocent until proven guilty. Treat them decently until guilt is proven.
10. As long as they aren't spamming or breaking the code of conduct, players should be free to believe whatever they want.
11. As long as they aren't spamming or breaking the code of conduct, players should be free to yell, chat, gossip, post, or otherwise say whatever they want.
12. You're probably going to want admins. Admins get special powers for the good of the mud, not to make them feel cool. They aren't an entitlement because the imp is your cousin, and if you're not using them for the good of all (which includes not using them at all and shirking your admin duties) they should get yanked.
13. Players might have to pay to keep the mud running. They should know how much they will have to pay beforehand. You shouldn't have different pay scales for different players unless those other players actually involve more costs. If you do let people buy

greater privileges, then you should allow ANY player to buy these privileges, and not bar some people from it because you don't like them. Also, payment doesn't mean they get to have godlike powers to fry other people with--they still have to obey these rights.

14. Players have a right to know why the admins did things the way they did, like why they playerwiped or moved an area or whatever. In particular, why a given immortal banned one guy for spamming but let the other off the hook. (Note that given the circumstances, you may not be able to do for legal reasons).
15. No exceptions to the code of conduct--it applies to everyone.
16. Don't playerwipe/data wipe unless the mud can't survive unless you do. If you do have to wipe someone, make it up to them somehow.
17. Let people hang out wherever they want with whoever they want in the mud, unless it's causing mud slowdowns or something.
18. Players have a right to privacy. Don't snoop them or spy on them or rifle through their mail unless you are investigating a code of conduct violation.
19. There's probably stuff missing in this doc.

The interesting thing is that mud admins find the second doc much more palatable. Phrased in this way, it's not an abrogation of their power. It's concrete advice that will help you retain your playerbase. In fact, some even said they'd be willing to sign to it as a "declaration" because it would make them look good as admins to adhere to such a standard. There are damn few justifiable reasons to deny any of the things in the above version--and if you did, likely you'd be considered a jerk for doing it--or a power-hungry admin with a god complex (is there a difference?).

If admins see themselves as above the community, do they have any responsibilities towards the community whatsoever?

If they do, can they be articulated?

If they can be articulated and generally agreed upon, are they players' rights or are they merely good ethics on the part of a mud administrator?

The irony is that it's all probably moot. The reason why players hold admins to this standard is because they have assumed that this standard is what should be there regardless. In other words, the advice works because it's what players expect and say they want. Which is no

different from self-affirmed rights. This is probably why players scream that their rights have been violated when one of the above articles is violated (even if the admins are not signatories to any such document).

So the real point of a document like this would be to see how many admins would sign, not how many players. As an admin, yes, I'd probably sign, in the sense that I'd agree that these are solid administrative principles *in terms of practical effect*.

The question then becomes, if we subscribe in terms of practical effect, and as long as there are sufficient loopholes present that we can exercise power when we need to, who *cares* whether players think these are rights, laws, doohickeys, or power fantasies? Why do you want freedom to do things that are *bad* admin or business practice? Especially since "rights" in the real world already have zero power?

(Note that I am not suggesting that all the muds or commercial endeavors should run out and implement this list of "rights," nor am I suggesting that if they don't that they are run by power-hungry maniacs. This is too complex an issue to reduce to that level.)

The last step that would be required to actually make such a document into a Bill of Rights for players would be for it to be codified into "law," (which is probably be a Code of Conduct or Terms of Service agreement signed by all players, account holders, and admins) and thus be something that admins would be bound to. Admins are, by and large, not going to do this, even though some of the commercial MMORPG companies *do* require their game masters to sign documents saying that they will behave in a manner surprisingly similar to what the document espouses. But there's an interesting forward-thinking pie-in-the-sky reason for admins to contemplate doing so someday...

Someday there won't *be* any admins. Someday it's gonna be your bank records and your grocery shopping and your credit report and yes, your virtual homepage with data that exists nowhere else. Someday it's gonna be *Snow Crash* and *Neuromancer* and *Otherland* all wrapped up into one, and it may be a little harder to write to Customer Service. Your avatar profile might be your credit record and your resume and your academic transcript, as well as your XP earned.

On the day that happens, I bet we'll all wish we had a few more rights in the face of a very large, distributed server, anarchic, virtual world where it might be very *hard* to move to a different service provider. The future is already almost here.

So in the end, all the Declaration of the Rights of Avatars is, is a useful tool for players and admins alike: admins who don't know what they are doing can use it as a blueprint, and players can use it to evaluate mud administrations in search of one they like.

So yeah. I'm not seriously proposing that we declare the rights of avatars. The doc is, as has been shown, riddled with gotchas and logical holes. It's a hypothetical exercise.

For now.