

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

There Is No Spoon

Yochai Benkler

Virtual worlds are like *The Matrix*. The answer to the question: “Who should own this spoon, the provider or the user?” is, *there is no spoon*. Once you understand this, the discussions of “virtual worlds” bring about an eerie déjà vu--“it feels like you’re in a room,” it’s a “virtual community,” we should have a “declaration of independence” for “new spaces for self-governance”. There is code, interface, and the social relations they make possible. There is no “governance of a virtual world.” There is simply the question of governance in the relations among users of a class of software platforms that have certain degrees of freedom in their design, resulting in a variety of social affordances, and therefore facilitating a variety of social and economic interactions.

The phenomena that fall under the moniker of “virtual worlds” combine three discrete components that tend to be confused in the debate over property and governance relations among the users of these software platforms. First, the interface. They offer richly instantiated renderings of the communications of users and the interactions among them. Second, these interfaces were initially developed, and have received widest adoption, as platforms for immersive human play. And third, they have begun to be used as platforms for other types of human connection, most clearly and distinctly for collaborative creativity, on the one hand, and as both platforms for and objects of trade, on the other hand.

To analyze the proper institutional arrangement for the various social relations mediated by the software platforms we now call “virtual worlds” we have to get rid of the fascination with the rendering. Really. *There is no spoon*. When a richly rendered collaboration platform is used by its users to co-author a story--as when users of *Second Life* “build” a “town” with a theme--it is a platform that is part of a category with Wikis, parts of the blogosphere, or Slash. That is, it is a form of social software, mediating a social relation among individuals who have no pre-existing relations, and are weakly-tied through a group interaction whose stickiness comes from the possibility of shared efficacy among its users. When the rich rendering is a fancy front end for an online store, whether for mail-order real things or for “downloads” of music, patterns, or

images, as in the case of *There*, then it is part of a category of human interactions with Amazon or AOL. When users are engaged in a shoot-'em-up, bang whiz mad rush, then they are engaging in a shoot-'em-up, bang whiz. The difference in rendering matters because it may change how attractive, immersive, or dull the experience is, and it may effect whether or not the activity will seriously challenge Terminator IV. They are a part of the same phenomenon as Dungeons and Dragons, and maybe Star Trek.

So now take the question of property. Castronova beseeches us to reject the commodification of virtual worlds so as to preserve their role as play arenas. But that cannot be a criticism of *There* any more than it would be a criticism of AOL or Amazon. *There* is not a play arena, it is an ecommerce interface. The “play” it offers is like the “play” that malls offer. There may be a movie theatre, there may be rides for kids, but it is a transactional platform. Castronova’s question is not wrong. But “should there be property relations and commodification of game objects, or will this spoil the game?” is not a policy question, but a design question aimed at a certain class of platform providers. That is, it is addressed properly not to judges or regulators, but to the engineers who design game platforms and to their business managers or marketers. The claim is that, if you want the platform that you are building to be a game, make it hard, not easy, to real-world-commodify your game objects and moves. This may or may not be correct as a sociological and psychological matter. I don’t know. But it is not a policy question, and it is a question of marketing immersive game environment and ecommerce sites, not of governing virtual worlds.

Should there be property in *Second Life* objects, which is owned by the users who created it, and may be subject to easy-to-use creative commons licenses? Again, this is a design question, not a policy question. At baseline, as visually attractive immersive entertainment, “virtual worlds” occupy, in some part, the same role that Hollywood movies and some television shows play: escapist, engaging, entertainment. On that dimension they are much more attractive normatively than Hollywood movies or the soaps. Whereas video entertainment places the users in a passive role, as pure recipients of content made by others, virtual worlds allow users to make their own stories. Users are constructed in a fashion that makes them both more autonomous and more sociable. Nowhere is this clearer than in *Second Life*, where almost all objects, and all storylines--in the sense of villages and areas--are created by the users, for the users. *Second Life*

offers a model for a relationship between the market-based provider of an entertainment platform and its consumer/user that is fundamentally different from the relationship of the movie studio to the movie viewer. What makes this plausible substitutability is the quality of the rendering. But a central part of this difference depends on the kind of social interaction made possible by the platform; in other words, the kind of social software that it will be.

So should property relations be part of the social relationship for which *Second Life* provides a platform? The question is not one of prediction about whether courts will find rights here. Jack Balkin is right that someone will get hurt, some time, and particularly where there is money at stake law will come in to this space and do its damage, or maybe its repair. But games are not company towns or regulated common carriers. Users have the option of joining one, or the other, and it takes a lot more concentration and forcing to persuade courts to void contractual terms that are not about tort liability and harm to third parties, but are about exchanges or disclaimers of proprietary claims. So the question of property is a question of institutional design of the platform: should the EULA, or the policy adopted by a volunteer run platform, be structured to assure that individual users retain individual proprietary rights in game objects they design using the platform, subject to case-by-case, object-by-object, user-by-user, full or partial, disclaimer through a cc license, or should there be a single moment of collective disclaimer, collective mutual commitment to share all that the participants in the social interaction build. Should the platform make the products of the acts of collective creation free as the air to common use?

Should” is a word that calls for a normative judgment. “Should” could be answered based on a normative commitment to making money. The platform providers could ask: “Will this make us richer?” That is not a question to which I will endeavor to offer a direct answer here, but there may be indirect implications for this question too--that is, if users join a platform and pay a fee because it offers them attractive relations with others and an opportunity to be highly creative, then those characteristics that will make for cohesive social relations and heightened creativity will also increase the attractiveness of the platform to subscribers. But the interesting questions are, which approach will better foster creativity on this platform, give users greater creative autonomy, and create a more effective social network?

To answer this question we have to define the relationship that the platform is aimed to facilitate. Cory Andrejko wrote that the vision behind *Second Life* was Stephenson's Metaverse. In other words, a richly-rendered general purpose platform. The Internet with avatars. Given this broad definition, the designers of *Second Life* saw a need to provide a transactional framework and engine, alongside the tools and mechanisms for non-market creative collaboration and communication. Fair enough for that ambition, and if that is the ambition, building in easy-to-use cc licenses is clearly preferable to not having them, from the perspective of avoiding some of the standard dampening effects that exclusive rights in information have on incremental innovation and creativity. But a Metaverse, a social platform that has all the degrees of freedom of the real world built in, is by no means an obvious best goal from the perspective of building a creative platform for people who want to co-create. It is possible that an environment that has different, perhaps even more limited, affordances, and hence is likely to generate different modes of human interaction, would be better. The basic position is that free social sharing of creation is a different social experience than exchanges interlaced with markets; that free creative borrowing is a different creative experience and a different cultural form than sales-oriented pervasive licensing; and that "virtual world" designers have at their disposal toggles that would allow them to build creative collaboration platforms that are distinctly safe for non-commodified, social sharing based collaborative creativity. The choice to use them or not to use them is not dictated by economic efficiency or by technology. It is a choice that structures the environment as a cultural artifact and as a form of social software.

To see how constraining the institutional degrees of freedom open to participants in structuring their relations with others can optimize the platform for shared creativity we need to stop looking at the pretty pictures. We need to ask why a Metaverse approach is better than Wikipedia's decision that all contributions to Wikipedia are deemed to be a license of the contribution under the GNU Free Documentation License, or the decision of the free software movement and most open source projects to license their contributions in ways that limit the ability of individual contributors to exclude others from their contributions to the common effort. The dampening effects of exclusive rights on creation are well understood in the economics literature. Existing information--software, source materials for Wikipedia articles, other user's objects and scripts for *Second Life* user--is one of the two primary inputs into new creation (human creativity is the other). If you enclose it, you make it, at the margin, less available. If you

pepper the environment with potential inputs that have diverse permissions and prohibitions, you increase this effect. Whether there are beneficial effects to introducing exclusive rights, on the other hand, depends on how one understands the motivation of the participants. If, as Eben Moglen poetically put it, “it’s an emergent property of connected human minds that they create things for one another’s pleasure and to conquer their uneasy sense of being too alone,” then the beneficial effect of introducing copyrights is minimal to nonexistent, while its dampening effects remain. Rather than an ontological claim about the nature of all human minds, this can be taken to be an empirical claim about a subset of human beings--those that are drawn to writing free software or collaborating on a massive free encyclopedia--or a subset of human behavior--most human beings have times when we, who also know how to search for money, seek something else--connectedness with others. In the case of designing *Second Life*, or maybe Second Life prime, the question is a very straightforward empirical one. Do users pay \$x per month in the expectation that they will create something that they can later license to others for a fee, or do they pay that sum in order to get access to a platform of creative tools and connections with creative others, so that they can collaborate on co-creating story lines and pretty pictures of their own? If the latter is descriptively true of the motivational profile of Second Lifers, then introducing © into the game, no matter how modulated by (cc) permissions, mostly introduces drag. The effect of free, open collaboration that would result from everyone adopting the most expansive (cc) licenses for all their individual contributions could be achieved more directly by the EULA stating that, as a precondition to participating in *Second Life*, every user licenses every creation based on collaborations on this platform under a GFDL or a creative commons ShareAlike license.

The desirability of one licensing regime or another must be considered from the perspective of the social function. The best arrangement for *There* is an institutional design problem that is similar to AOL or Amazon user-created content. The best arrangement for *Second Life*--whose basic design characteristic is that what it offers is a collaborative creation platform--is a problem similar to Wikipedia. That the content produced on the former consists of richly rendered graphic objects rather than the textual definitions produced in the latter is irrelevant. Both are platforms for large scale collaboration among users who are engaged in the practice because they wish to participate in the collaborative creative exercise that the platform

enables. As Clay Shirky captured so well, the “user” of social software is the group, not the individual. The best design is therefore the design that will best enable the group to keep its cohesion, to avoid the centripetal forces that our irrepressible individuality places on groups. To explain to themselves why adopting © + (cc) as its policy is a good idea for *Second Life*, the systems designers have to answer to themselves in what way they are different from Wikipedia and SourceForge, not in what way they are different than *There*. The latter question is trivial. The former, far from it.

The freedom to make together may sometimes require restrictions on the degrees of institutional freedom that participants have within the relationship, as long as they continue to choose to be participants. A rule that prohibits handling a soccer ball “limits” the freedom of players. But without it soccer would not be soccer, and no one would be able to play the game. A common creative relationship in which everyone retains the freedom to exclude everyone else from their own contributions is different from common creative relationships where all have ceded their rights to exclude anyone else. The latter emphasizes the mutual dependence and reliance of the participants on each other’s creativity, rather than the individual components that each contributes. Creative collaborations like free software or Wikipedia, that rely on large amounts of incremental, iterative acts of creation, built from large numbers of contributions from diverse contributors, have adopted an institutional framework through which each contributor eschews the right to exclude. They thereby create a commons, out of which everyone is free to take as they please and into which everyone is pre-committed to contributing everything they add. By so constructing their institutional environment, they have become highly effective and sustainable models of creative collaboration, while retaining large amounts of freedom of action for their participants that would have been more, rather than less constrained, if every new act of creativity had required them to seek the permission of others whose work they wish to extend.

There is no spoon. There are only social relations mediated by a richly rendered communications platforms. The question of “who should own this spoon?” should be understood as a question about what we want the social relations using the platform to be like. That question requires that we define a range of social relations that we believe the platform will enable, and a normative belief about how those relations should go. The rest is lawyering--constructing the detailed institutional structure within which these social relations will then be played out.