Straight Talk About Game Gods

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Joshua A.T. Fairfield, *The God Paradox*, **89 B. U. L. Rev. 1017** (2009).

Joshua Fairfield's *The God Paradox* takes an unambiguous normative proposition—that operators of online networks should operate those networks in ways that mirror common carrier principles—and justifies that proposition in unmistakably pragmatic terms: Doing so may or may not make users of those networks better off, and may or may not make society better off. But it will clearly make the operators themselves better off, because reducing their control over user behavior is likely to reduce their risks of liability. That's the "paradox." Indirectly, that approach will benefit users and society.

The article situates its "less control means less risk of liability" argument in the context of multiplayer online videogames and other virtual worlds, which are operated by firms that refer to themselves, in context, as "game gods": both formally and functionally, the operators claim the power to monitor and control all aspects of individual user or player experience, including both online behavior and communication with other users. In part "game gods" justify this power in terms of maintaining the artistic and competitive integrity of the game environments. That justification is not addressed in this article. In part the "gods" justify this power in terms of self-interest: Control reduces liability. Maintaining an acceptably low risk of liability is essential to maintaining the gods' incentive to supply the game environments.

The "game gods" metaphor gives the article a compelling hook, but the author is wise to avoid a conceptual or theoretical exploration of the issues in terms of deities and theologies. His question is the more straightforward question that operators of virtual worlds and their lawyers would like to have answered: Is this latter justification accurate? The article walks through a series of possible legal claims that might be posed (and that have been posed) in virtual worlds contexts, against game gods, by virtue of one player's conduct vis-a-vis another and/or vis-a-vis general public policy. There are discussions of claims based on intellectual property rights (both copyright and trademark), claims based on common law rights (property, tort, and contract), and public law claims, with consideration given to indirect liability theories and safe harbors with respect to both copyright (Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 512 (2006)) and tort (Communications Decency Act (DCA), 47 U.S.C. § 230 (2000)).

Because the article does not indulge the conceptual side of these questions, it leaves a lot of potential questions unanswered. The "game gods" and their relationship to virtual world "inhabitants" evoke some of the fundamental questions of cyberlaw, particularly whether and how public policy should enable the potential of vast online networks, and whether and how public policy should treat online networks differently than they treat offline systems. Yochai Benkler's The Wealth of Networks and David Post's recent Jefferson's Moose are obvious reference points for future development of the "game gods" argument. Does the "god paradox" argument "scale"; in other words, to what extent does apply to online networks beyond virtual worlds? The author's recommendation that game gods should adopt a "common carriage" model of self-regulation invites discussing whether that model should be adopted via formal public policy (by extension of kind of "net neutrality," for example); the author expresses disclaims taking a position on the net neutrality question, and is equivocal regarding the extent to which a different form of "common carriage" should be imposed on particular environments. What factors would inform adaptation of a common carriage model to a particular setting? Common carriage as a model for communications networks is a phenomenon with a rich history. To what extent does that history read on virtual worlds, and should it? Last on my list of salient questions to be explored further is the extent to which the thesis of the article depends on specific characteristics of the community of the governed. Delegating policing to game players can help absolve the game god of liability risk. Are there other

attributes of the player population that need to exist to ensure that the game environment is not only acceptably risk-free, but also sustainable?

In the cyberlaw literature as a whole, these are lively topics; there are few if any commonly accepted answers. In the context of this article, I regard their existence as a virtue rather than a drawback. As much as I enjoy a great conceptual analysis, I also appreciate a straightforward and direct practical argument. The cyberlaw literature to date has, at times, indulged the former at the expense of the latter.   As the culture and economy of virtual worlds get ever larger and more complex, lawyers need answers. This article offers some.

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