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**Public lives and private communities:  
The terms of service agreement and  
life in virtual worlds****by Debora J. Halbert**

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## Abstract

This paper argues that the terms of service (TOS) agreements, also sometimes referred to as end user license agreements (EULAs), governing virtual worlds have important implications for the political and legal structures under which our virtual selves will function. This essay will focus on four key political concepts central to all TOS agreements studied. These concepts include contract language governing speech codes, intellectual property rights, privacy, and the relationship of the gaming world to the real world. If indeed these agreements offer governing constraints for people functioning in virtual spaces, then not only should their anti-democratic construction be considered, but as people spend more time in virtual worlds, these structures will become increasingly important to many aspects of our virtual identities.

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## I. Introduction

When I first entered *Second Life* through Initiation Island, I had no idea what was going on. For a surreal few hours I wandered around trying to figure out how to make my avatar function. Time went quickly as I learned to walk and fly; I went through the talking tutorial, and spent a considerable amount of time playing with the visual dimensions of my avatar. Given that my account is free, I have a “stock” character, but it is possible to change the height, weight, facial features, hair colors, and clothing styles, to achieve some variability and uniqueness for your new online identity. Eventually, you can purchase other features — new skin tones, hair types, and clothing using real money translated into Linden dollars.

After learning some rudimentary skills, I somehow moved to a different “place” which claimed to offer help for the lost. As I appeared, a slightly pudgy avatar was walking away from me. I learned by accident that any avatar wandering about could be clicked on, at which point you discover information about the person represented. The avatar is a walking set of data regarding groups he, she or it belongs to, and includes information about the “real” person behind the virtual image. I clicked on the back of this particular avatar, in part to figure out if this was someone who could “help” me. The information screen next to the pudgy avatar told me that this person sought to make his avatar look as much as possible like his “real” self. Thus, despite the fact we all have last names taken from a stock list and

can become whomever we want, he chose to simulate what he claimed was his authentic self. I can think of no non-virtual space where one can find such detailed information about a stranger who simply walks past. This brief intervention into *Second Life*, however, highlights much about what life in virtual worlds is like — a combination of access to information, identity issues, and, one can hope, play and adventure.

Scholars predict that the boundaries between virtual and real worlds will continue to blur as our virtual lives as gamers and Internet users intertwines with our offline identities (Wark, 2007; Lastowka and Hunter, 2004), creating speculation about the future legal and social implications of virtual worlds (Balkin and Noveck, 2006; Barfield, 2006). Edward Castronova (2005) documents the increasing economic and social significance of what he terms synthetic worlds, realities that provide an opportunity for many to avoid social isolation and the opportunity to seek what they cannot find in the “real” world [1]. In a speech at Linden Labs, Chairman Mitch Kapor argued that virtual worlds, such as *Second Life*, are the next revolution in technology that will change the way we interact with each other (Mims, 2007). In other words, as migrations into virtual worlds such as gaming and social networking sites occurs, it becomes more relevant to think about the socio-legal implications of the spaces in which we increasingly spend our time.

While the contract language of games and social networking sites may not seem as important as other Internet-related questions being debated today, the frameworks established through privacy statements, Terms of Service (TOS) agreements, or End User License Agreements (EULAs), are the legal foundations of virtual worlds. This paper will focus on how virtual worlds are constructed via the legal framework of these statements. The contract language should remind us that the virtual worlds we enter are proprietary and the political structures creating these worlds were not designed to be democratic. While there is still debate about the legality of EULAs [2], and arguments that virtual worlds should construct their own legal rules internally [3], the TOS and EULAs tend to serve as the governing documents for virtual worlds (Grimes, *et al.*, 2008). As our analog lives become more entangled with the virtual, and online conflicts are mediated in both virtual and real space, these statements, most of which are rarely read by users, will take on greater significance.

For the purposes of this paper, I collected the TOS and privacy agreements for different online games and social networking sites including: *EverQuest*, *World of Warcraft*, *Sims online*, *Ultima*, *Lineage*, *Second Life*, *Shadowbane*, *MySpace* and *Facebook*. These games represent a variety of different environments. First, there are massively multi-player online role playing games (MMORPGs) that construct proprietary and fictionalized worlds where competition is the goal (*EverQuest*, *Ultima*, *Shadowbane*, *World of Warcraft*). Second, exist virtual environments where users generate the content and the goal is socially oriented rather than competitive (*Sims online* and *Second Life*). Third, are social networking sites that are ostensibly about “authentic” selves interacting with other “real” people (*MySpace* and *Facebook*) [4].

I first provide a brief narrative of the current scope and interest in virtual worlds from social networking sites to gaming environments in order to set the stage for looking at the contracts by asking the question, “why play?” Second, the text governing in-game interaction as outlined in the TOS agreements related to issues of privacy, speech, and property rights will be analyzed. Finally, I will discuss the implications of these virtual realities in terms of privacy, identity, and democracy for the future.

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## II. So why play?

Castronova (2005) has documented the evolution of synthetic worlds and his research suggests that an important shift is occurring. Specifically, millions of people are now spending some part of their day in virtual games. As Meadows (2008) points out,

“The number of hours alone that people spend in systems such as *Second Life* is a good indicator that they are more powerful than TV or other media. I, for example, spent days in *Second Life* and never stopped other than to sleep. I’ve never done that with television, radio, movies, or the Internet.” [5]

One survey shows that as many as 1/5 of the players in the popular game *EverQuest*

consider the game environment to be their primary reality [6].

Castronova posits that such behavior exists among those who play virtual games because synthetic worlds offer the opportunity to escape to a reality that is better than their lived experience. Given that for many the “real world” alternative is premised on work-based drudgery within a demystified terrain, the choice seems clear [7]. Furthermore, once someone begins playing multi-user games, obligations to fellow players emerge as the player become more involved in the virtual world.

As one informal interviewee who plays *World of Warcraft* noted, there are duties and obligations to your fellow players and if you choose to miss a “raid” to socialize outside the game, it has repercussions for your online friends and your game status. For example, if you are the healer of the group and you don’t show up, others may die. The more intense your guild within *World of Warcraft*, for example, the more is expected of you in terms of game time and if you cannot fulfill it, there are plenty of other players waiting for their turn. Thus, it is not uncommon for a high-level player to need to play the game hours each day in order to maintain their status (Loisher, 2007).

Because the games are fun, interactive, and time flies while inside the game, there are few reasons to avoid playing when the rewards are obvious. As Loisher (2007) noted, in *World of Warcraft*, rewards for play are instantly realized in more player points or possessions. Such an immediate reward system does not exist in the real world where often you labor at your job or in relationships without ever seeing tangible rewards. While some players struggle with the amount of time they spend in-game and wonder if this is a legitimate use of time, criticisms leveled against virtual games are not unique to that environment, but extend to all forms of play; but as many scholars have recognized, play is essential to humanity [8]. Furthermore, the mastery of the game can provide layers of meaning that allow a person to overcome the alienation of everyday life.

Imagine, for example, you are the leader of one of the most powerful corporations vying for control over the entire Universe. Then imagine that in your real life you manage a heating and cooling company in Sweden. While I cannot make claims to the exciting nature of heating and cooling, it seems likely that spending time in the synthetic world of *Eve Online*, where your power is exceptional, will infuse more excitement into your life than other pursuits. Indeed, SirMolle’s (whose real name is unknown) organization in *Eve Online* stirred up controversy by gaining access to privileged information that provided his corporation with an unfair advantage in the play of the game. The response to this perceived unfairness was so strong that company owners for *Eve Online* created a real-world democratically elected board to oversee game play and establish fair rules (Schiesel, 2007). What happened in *Eve Online* is indicative of what is happening in many virtual worlds — the boundaries between real and virtual are porous and what seems to be games have taken on the complexity of legitimate economic, political and social spaces.

There are numerous reasons why individuals join and play in virtual environments and the popularity of these sites continues to increase. For example, EverQuest has the 77th highest GNP in the world, higher than many “real” countries (“Play is political,” 2007) indicating not only the popularity of the Web site but the links existing between virtual and real worlds. Facebook reached over 130 million active users in 2008, that is those users who have checked their pages in the last 30 days (Smith, 2008). One survey of ninth and tenth grade students regarding their MySpace usage suggests that most use the service to stay connected to friends and find out about new music (“Student opinions of social networking,” 2009). Social connectivity seems to be a primary reason for using these sites (Ellison, *et al.*, 2007), though there are differences in race, ethnicity and college education related to usage that could have implications for digital inequality over time (Hargittai, 2007; Moriarty, 2007).

As these gaming and social networking spaces evolve into more sophisticated communities, a host of questions regarding the legal, social and political structures are emerging. Furthermore, it becomes clear that these spaces create meaning for the players and that more and more people are using computer-mediated mechanisms either for play or social interaction. Our future(s) will increasingly include online interactivity, which makes the legal constructs of the environments in which people play more important. It is to the TOS agreements and privacy statements that this paper now turns.

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### III. The structure of the virtual

It is questionable how often users read the text of the TOS or the privacy statements attached to virtual worlds. Generally speaking, it can be assumed players are most interested in getting into the game to play and are less interested in the legal technicalities structuring the gaming environment. As Meadows notes about his introduction to *Second Life*,

"I plugged in my personal data, including a credit card number, quickly skimmed over a thing called an End User's License Agreement, and unthinkingly clicked Agree. I didn't think the End User's License Agreement (EULA) would be important enough to read, or that the Terms of Service would have any impact on my life, and so, like an immigrant entering a new country with only a vague grasp of the laws, I quickly scrawled my signature on this constitution and boldly stepped into a world whose rules I'd never read." [9]

However, reading the rules might be informative. TOS agreements restrict the activities allowable in synthetic worlds and the user is responsible for reading and understanding the rules and possible changes as outlined in the TOS agreements. However, as pointed out by Grimes, *et al.* (2008) in their cross-comparative work on TOS and EULA agreements for virtual worlds, virtual world governing documents at best create a political system of "obfuscatocracy" because the contractual language is difficult to understand.

Joshua Fairfield identifies several sources of law in virtual worlds besides EULAs — community-negotiated norms, player consent, and background laws are all important to the functioning of these virtual spaces [10]. However, I would argue that the EULAs or TOS agreements are the most important of these structures for the purposes of mediating disputes. In-game rules and norms must function within the boundaries of the TOS agreements, but the TOS itself must be accepted before ever stepping foot into the virtual space. The ultimate rules of the road are the TOS agreements because to join one of these services you must agree to abide by these rules, usually by clicking on an "I agree" button as you enter the site for the first time.

It can be argued that TOS agreements serve as a "social contract" for the synthetic world. Raph Koster [11] argues that players structure a social contract within games to govern their behaviors, the social norms of the game. The TOS is another layer of a presumed social contract, which suggests many of these spaces are not democratic in its most conventionally understood sense [12]. Social contract theory is premised upon the fact that individuals form a social contract with each other that allows them to create a mutually agreed form of government. However, the social contract signed by anyone entering online worlds is top-down and authoritarian. One either accepts the terms and conditions of the TOS or does not enter the game — it is a contract of adhesion. Thus, while the concept of a social contract describes the process of agreeing to the specific terms of service for any given site, we should be wary of applying this concept too readily — players have minimal control over the restrictions placed upon their activities.

Gaming worlds and social networking sites are autocracies where game owners control activity within the game, despite the feeling by many users that these spaces function as "public" and therefore democratic spaces. While some argue that players can make an impact via gaming conferences and such, the balance of power is not democratic, which may become increasingly important if life activities shift to virtual worlds [13]. Certainly, users have venues within which to make comments, complaints, and even in some cases stage protests, and owners have an interest in keeping their customers happy.

For example, the recent *Facebook* controversy over the TOS demonstrates that users can change these agreements. The modification of the Terms of Service for *Facebook* generated enormous controversy when those who took the time to read the changes noticed that the language had been modified to give *Facebook* what appeared to be extended ownership over personal information even after an account was terminated (Walters, 2009). While *Facebook* responded to user outcry and revised the TOS, the legal structure of the EULA or TOS as a whole remained intact ("People against the new Terms of Service (TOS)," 2009). The relationship established in these agreements grants the vast majority of power to the game owners, not the users. Furthermore, these agreements include language allowing the game owners to change the rules at will without notification — it is the user's responsibility to keep up to date on what is allowed in the game.

The TOS agreements I reviewed all included coverage of similar issues. While the TOS agreements are extensive and include language about limited liability, legal jurisdiction, and a variety of disclaimers about the quality of the software, this essay will focus on four of the

more political dimensions of the TOS agreements that could become central to the lives one lives in synthetic worlds — speech codes, intellectual property rights, privacy, and the relationship of the gaming world to the real world. While not an exclusive list, these key areas help structure both the creative work done by users and the manner in which users interact with each other.

### 1. Speech codes

The first set of regulations establishing control over some level of game play focuses on appropriate language and behavior. These can be read as speech codes and codes of conduct enforced within the gaming environment. Virtually all TOS agreements include language about what is allowable speech. Generally speaking, what would be considered hate speech is prohibited and many agreements state specifically that hate speech is not allowed. *EverQuest's* Rules of Conduct illustrate the language used:

“You agree not to do any of the following while on The Station or in any SOE Communication Feature: transmit or facilitate the transmission of any User Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, that may be invasive of another’s right of privacy or publicity, hateful, racially, ethnically or otherwise objectionable.” (Sony Online Entertainment, n.d.)

Some games try to warn players that they should not expect the language and tone of comments made in online games to always meet normal standards of decency. For example, while the game *Lineage* specifically claims they do not tolerate inappropriate language, they also specifically state that they do not pre-screen content. While they can remove harmful content at any time, they do not have an “obligation” to do so [14]. Thus, the game owner is covered for potentially problematic speech occurring in the game and reserves rights regarding controls on speech that would be difficult to enforce in the “real” world.

*Facebook's* code of conduct tries to establish community norms as part of the type of interaction people should have on the site. They state,

“While we believe users should be able to express themselves and their point of view, certain kinds of speech simply do not belong in a community like *Facebook*. Therefore, you may not post or share Content that:

- is obscene, pornographic or sexually explicit
- depicts graphic or gratuitous violence
- makes threats of any kind or that intimidates, harasses, or bullies anyone
- is derogatory, demeaning, malicious, defamatory, abusive, offensive or hateful.”

(Facebook TOS)

*MySpace* also includes speech codes in their TOS agreement that allows them to “reject, refuse to post or delete any Content for any or no reason.” [15]

Linden Labs takes the most speech-neutral approach. While they have guidelines for how one should behave in *Second Life*, the TOS agreement positions Linden Labs as a service provider, not a game owner and claims that “Linden Lab generally does not regulate the content of communications between users or users’ interactions within the Service. As a result, Linden Labs has limited, if any, control over the “quality, safety, morality, legality, truthfulness or accuracy of various aspects of the Service.” [16] However, even in *Second Life*, the user agrees to not create content that is “harmful, threatening, abusive, harassing, causes tort, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable.” [17]

That being said, one of my first *Second Life* “conversations” began when a “person” walked up to me and said, “U R ugly.” Needless to say, I felt something must be socially wrong with this “person” and avoided further conversation. It is clear this avatar’s owner had not read the TOS agreement, which could be read to prohibit such a statement as “abusive,” or at the very least, “otherwise objectionable.” However, the TOS of *Second Life* tries to warn you that life will be filled with unpleasant experiences in the virtual world because, in at least some

cases, people seem to behave even less civilly than they would in the “real” world.

These TOS agreements allow companies to remove undesirable content, typically deemed obscene or racist. For example, as reported in the *Second Life Herald*, *The Sims* deleted virtual swastikas and a virtual sculpture of a woman breastfeeding, and *Second Life* has banned people for membership in virtual Nazi groups (Stewart, 2005). However, lots of seemingly prohibited speech goes unsanctioned. One *World of Warcraft* player noted that he was tired of racist speech that occurred on raids where it was common for other players to use the “N” word (Loisher, 2007). Unless a complaint is lodged, racist in-game speech remains.

*Facebook* also seems to allow for a broader level of speech than their TOS might suggest. For example, a group entitled, “Remove anti-gay groups from Facebook,” is dedicated to trying to get the service to employ its rules of conduct to “eliminate those supporting an anti-gay agenda from the site.” A second *Facebook* site called “Campaign for Facebook to Review Groups” was set up when some offended people successfully got the *Facebook* site “Dead Babies Make Me Laugh” removed, but only after the creator of the site took it down, and without help from *Facebook* itself. This group would like to see even more groups removed from *Facebook* that don’t meet their standards of civility and humor. Needless to say, what *Facebook* has created for itself are numerous dilemmas regarding the scope of free speech on the site.

Rather than debate the merits of what policy a social networking site or a gaming environment should develop to oversee speech, what needs to be considered is the fact that a proprietary system is in charge of the outcome. Yet, as Peter Sinclair notes, there is reason to believe that many will see these virtual worlds as the equivalent of a twenty-first century town square [18]. Overall, companies have created terms of service to regulate virtual public spheres in ways that would not be possible in non-virtual spaces. Some commentators see these as the equivalent of virtual company towns [19]. Debate over how much speech should be regulated in virtual worlds exists, but regardless of the debate, the TOS allows owners to regulate as they see fit because they are private, proprietary spaces. Currently, there is no clear legal doctrine that would apply to speech in these private spaces [20].

## 2. Intellectual property rights

A second dimension dealt with by TOS agreements is the issue of intellectual property rights. Once one enters the world of computers, life is structured by copyright laws and virtual worlds are no exception. There are several dimensions regarding intellectual property discussed in TOS agreements. The licenses cover all aspects of the games and software as the exclusive property of the gaming company, an absolute but unsurprising grant of rights. However, licenses often go beyond content created by the game owners and employees. Virtually all gaming TOS agreements surveyed include provisions that make all the content generated by the user the property of the company. Thus, not only does the company own the creative work they produce, but all possible creative work developed by players. *EverQuest’s* grant of rights is typical:

“To the extent any of the User Content is not assignable, by submitting User Content to an SOE Communication Feature, you agree that SOE and/or its Third Party Providers shall be irrevocably entitled to, throughout the universe and in perpetuity, use, reproduce, modify, adapt, publish, broadcast, license, perform, post, sell, translate, create derivative works from and distribute any User Content for any purpose whatsoever, commercial or otherwise, in any medium now known or hereafter devised, without compensation or credit to the provider of the User Content. You also give up any claim that any use by SOE and/or its Third Party Providers of any User Content violates any of your rights, including but not limited to moral rights, privacy rights, rights to publicity, proprietary or other rights, and/or rights to credit for the material or ideas set forth therein.” [21]

Such a broad grant of rights includes play within the game as well as conversations held on chat rooms associated with the game. In essence, all spaces used to create community within virtual worlds become the private property of the company; a significant departure from creative work done in an off-line environment, or in virtual spaces not owned by gaming companies. When one links these broad-based intellectual property rights with the already existing prohibitions upon some aspects of speech, the terrain for speech-based

movement or creativity, which ultimately is all that exists in an online environment, is significantly circumscribed.

Most agreements go further to include clauses prohibiting game users from sending ideas for story lines or creative ideas. Such activity is prohibited to avoid the scenario of a user feeling that their idea was stolen if a similar story is later developed by the company. However, given the language of the agreements, it is clear users do not read the TOS agreement and send artwork and ideas all the time because most contracts include language granting full intellectual property rights to all such submissions, submissions that don't even exist. As the *Shadowbane* TOS claims,

"If at our request you send certain specific submissions (*e.g.*, Communications, including, postings and creative submissions) or, despite our request that you not send us any other creative materials, you send us creative suggestions, ideas, notes, drawings, concepts or other information, the Submissions shall be deemed, and shall remain, the property of Ubi. None of the Submissions shall be subject to any obligation of confidence on the part of Ubi, and Ubi shall not be liable for any use or disclosure of any Submissions. Without limitation on the foregoing, Ubi shall exclusively own all now known or hereafter existing rights to the Submissions of every kind and nature, in perpetuity, throughout the universe and shall be entitled to unrestricted use of the Submissions for any purpose whatsoever, commercial or otherwise, without compensation to the provider of the Submissions. You waive any and all moral rights in any such Submissions as well as any claim to a right of credit or approval."

[22]

Such a broad grant of rights over an activity that isn't supposed to happen anyway implies that these companies actually can make use of unsolicited ideas, but without any requirement to compensate users for their creative work. Such a system suggests that creativity within virtual worlds and commitment to the game and its evolution transcend people's interest in economic and proprietary rights over their creative work. Specific examples of how this plays out would help clarify the methods through which this particular aspect of the contract works.

*Second Life* is often touted as different from other online games in that it allows users to retain intellectual property rights over their creations. However, despite some language that does grant rights to the user, the fine print of this contract provides considerable control to Linden Labs. While the agreement states that the individual will retain copyright and other intellectual property rights, it goes on to provide Linden Labs with a right to use, reproduce, and delete content as they see fit, thus undermining the grant of copyright initially given [23]. Ultimately, it seems to make no difference what the level of IP protection is granted in virtual environments; people create and continue to play oblivious to their proprietary rights. Such an observation should leave intellectual property scholars puzzled over the value of this aspect of property law, given that it seems to have no direct affect on people's willingness to create.

Social networking sites must also define their relationship to intellectual property, but are primarily concerned with the misuse of the copyrighted work of others more than the creation of copyrighted work by users themselves. Because many people construct their identities online by listing favorite books, television programs, movies, and songs, there are myriad ways where users can include an unauthorized copy of a protected work on their Web site. *Facebook* includes a copyright policy and copyright FAQ along with the general provisions regarding the licensing of intellectual property for its users (*Facebook* copyright policy, 2007). The copyright policy describes in detail the steps that must be taken to make a copyright infringement and the counter-notification claim process as prescribed by the Digital Millennium Copyright Act. Otherwise, both *Facebook* and *MySpace* require a limited license granting them use of each user's copyrighted materials, but claim no intellectual property rights over the content posted by users.

Another aspect of *Facebook* and *MySpace* identity construction is how much these digital identities rely upon lists of cultural commodities to define the individual. A good portion of the substance of each online identity, and thus the possibility of reaching out to other "friends," is constructed through two key avenues: group affiliation and products of the culture industry. Central to *MySpace* is music culture, bands seeking people to listen to their

music and social networks designed around sharing music, show dates, and other such information. Culture industry content includes what movies best describe you as a person and what books you have read. Group affiliation is more complex and less product-oriented in many ways — these can include a virtually unlimited number of groups that might bring people of like mind together.

Most people seem to uncritically construct their lists of songs, books, and movies without giving a thought to the property rights invoked by these lists. Certainly, listing favorite music is not yet a copyright violation, but violations of copyright and trademarks occur as a matter of course in social networking circles as people share music and images. Furthermore, numerous acts of identity construction from fanzines to fan Web sites violate copyright law and have direct impacts on the ways in which some individuals view their personal identity. Given that people tend to appropriate from this large private cultural exchange to create their unique personalities, online identities become linked to private property and the culture industry. Some scholars are concerned that identity constructions that rely heavily on cultural commodities remove some of our personal autonomy. Legal scholar and cultural critic, Rosemary Coombe notes that, “As the cultural cosmos in which we live becomes increasingly commodified, we will need to define and defend the cultural practices of articulation with which we author the social world and construct the identities we occupy within it.” [24] Coombe is pointing to that ineffable link between culture, creativity and identity — an important location of interest to artists, intellectual property scholars, anthropologists and many more. In a commodified world, how is it possible to construct a meaningful identity that can escape the proprietary interests of the culture industry? The TOS agreements for most popular sites seem to help support the power of commodity-culture instead of the creation of an alternative to it.

### 3. Privacy

Virtual lives, led online, are very different when it comes to privacy issues. The story of Hasan Elahi demonstrates this point. Hasan Elahi initially began posting his whereabouts online because the U.S. government had mistakenly placed him on a terrorist watch list. In order to assure government officials that he was not engaged in subversive activities, Elahi uploaded pictures of his every move to the Web. At [www.trackingtransience.net](http://www.trackingtransience.net), not only can you discover where Elahi is on the globe via a bright red arrow pointing to his current location, but you can also view lists of purchases he has made since 2002, food he has eaten, and pictures of airports through which he has traveled.

As an artist and an academic, Elahi took an innovative approach to government surveillance — he began doing their work for them. As he noted for *Wired*, “I’ve discovered that the best way to protect your privacy is to give it away.” [25] By broadcasting his every move, Elahi transformed his life from possible terrorist suspect to banal traveler. As Thompson reports, “no ambitious agent is going to score a big intelligence triumph by snooping into your movements when there’s a Web page broadcasting the Big Mac you ate four minutes ago in Boise, Idaho.” [26] As a result, Elahi is one of several contemporary artists turning the concept of privacy on its head. Art critic Sara Raza notes,

“What has become increasingly and acutely apparent are the ways in which artists are now re-appropriating the standard tools of suppression, utilising technology, interview and interrogation; to create highly performative and ironic works that suggest the ultimate form of performance art: The rehearsal of daily existence. In particular, these methods are being put forward by a new generation of younger artists involved in socially engaged practices in largely community and network based projects that connect with a wide range of multi-disciplinary practices such as theatre, surveillance, consumption and architecture.” (Raza, n.d.)

Elhai highlights one of the most interesting aspects about privacy in the virtual world and the hybrid of virtuality within which we all find ourselves — that in virtual worlds, there is by definition no privacy. Any computer-based connection relies upon information to construct its reality and this information is thus open to view by others, both public and private agents. Much has been written recently about the right to privacy and the ways the Internet makes it easier to violate this right (Friedman, 2007; Solove, 2007). Enormous concern has been generated over the access to personal information made possible by the Internet and the ways in which that information might be used for nefarious purposes by those inclined, including the concern that we must fear private entities as much as public ones (Zittrain, 2008).



Furthermore, increasing numbers of people are choosing to interact with others via social networking sites or within virtual worlds. Thus, a new balance between public and private is developing as people supplement face-to-face communication with digital communication. We can learn much about individuals via the Internet — their interests, social status, relationships to others and preferences. The concept of privacy — and closely related notions of identity — enter new territory in virtual worlds.

Much like Elhai, living one's life virtually means living it in full view. Within such a world, the concept of privacy loses all meaning. What is left to keep private? Privacy is another aspect of the TOS agreements that merits attention. Given the online nature of games, privacy often has more to do with what the company will do with the personal information necessary to create an account than it has to do with actual game play. In fact, an early version of the EULA governing the *Sims Online* declared that there is no expectation of privacy within the game. They stated,

"You acknowledge and agree that your communications with other users via chats, conferences, bulletin boards, and any other avenues of communication on this Service are public and not private communications, and that you have no expectation of privacy concerning your use of this Service. You acknowledge that personal information that you communicate on this Service may be seen and used by others and result in unsolicited communications, therefore we strongly encourage you not to disclose any personal information about yourself in your public communications on our Service." (EA.com, "Terms of Service")

Such a statement acknowledges what every user should already know — anything in an online environment is subject to viewing by others and cannot be treated as "private" information. The site has since upgraded its terms of service and this clause is no longer part of the document.

Other contracts express some concern about privacy matters and offer warnings, especially to younger users, to be careful with their online identities. Most virtual worlds have separate privacy politics that detail how a given company will use information it collects about you and how the user should deal with various issues. *Second Life* specifically states that they can keep you under surveillance while you are using the Service [27]. Such surveillance offers interesting insight into the future governing structures of online life. Given that it is easier to track people via their electronic usages, surveillance, at least of the unsuspecting, can be much easier. Many civil libertarians are concerned about such power in the hands of the government, but these new governing bodies have written the right to surveillance into their TOS agreements. No bill of rights exists yet for the virtual world, though one has been written (Koster, 2006).

Privacy rights are of substantive concern for social networking environments because these environments deal with identities most closely aligned to our off-line ones. Both *Facebook* and *MySpace* are based in large part on "about me" narratives that often include vast amounts of information from date of birth to phone numbers and addresses. Each user can establish their own privacy settings but virtual identities are generally open at least at some level to public scrutiny and surveillance. *MySpace* and *Facebook* have "private" and "public" settings for personal pages, meaning that some people choose to limit who views their pages to "friends" in their network. These public spaces can be constantly under surveillance and the term "facebook stalking" has emerged to label the activity of spending a lot of time on other people's *Facebook* pages (Dubow, 2008).

While *Facebook* limits access to those in your network, typically the college you are affiliated with, if you click on others within that network, you often have access to their pages, unless they have set a more restrictive privacy setting. *Facebook* also provides a newsfeed detailing the actions taken by others in your friend network. Thus, if I change my relationship status from single to in a relationship, this information will be broadcast to others listed as my friends. Privacy concerns were initially expressed about this feature, but once an "opt-out" mechanism was created, these concerns died down and it would appear that many have chosen to opt-in to the newsfeed option. Both the newsfeed and public network status of information on *MySpace* and *Facebook* provide opportunities for voyeuristic surveillance.

*Facebook* offers a lengthy privacy policy outlining in great detail what information they collect, what information they share, and what you can and should do to protect privacy online (*Facebook*, Privacy statement). The privacy statement also makes it clear that

*Facebook* will use information they collect about you for the purposes of providing this information, with personal details removed, to third parties. *Facebook* claims to be able to target advertising towards each user individually and that, "we believe this benefits you." (*Facebook*, Privacy statement). Unless privacy filters are put into place, one should assume that everything posted is open to surveillance at least by friends, but possibly by unknown individuals, future employers or college administrators. The consequences raise interesting questions about the boundaries of college rules and acceptable student behavior. Some academic institutions have been enforcing institutional rules over incidents graphically demonstrated on *Facebook* (Felter, 2005).

Overall, it seems that virtual environments more realistically understand the lack of privacy that exists in the virtual world. Having said that, the concept of privacy evolved within the context of homes, not home pages; bodies, not avatars; and letters, not e-mail messages. The portability of our notion of privacy to a virtual world is not yet clear. Where can the "right to be let alone" be positioned in an online world given that the very act of being online assumes some level of interconnectedness and a desire not to be alone?

Social networking sites are premised upon connecting to others, even if the connection is as trivial as liking the same musical group. It is highly likely that those individuals who truly seek to be left alone do not have Internet connections, Web pages, or other links to the online world. One important reason for the seeming indifference to privacy concerns is that most social networking groups are dominated by the millennial generation, those 16–24 years of age. This group is most at home in the online environment. As one commentator notes, "Millennials' lives are public in a way that many older persons find uncomfortable if not dismaying." (Humphries, 2007).

#### 4. The non-virtual world

One final aspect of these TOS agreements will be discussed — the ways in which the TOS agreements seek to regulate the merger between the virtual world and the non-virtual. Much has been written about the burgeoning economy in gaming dollars on eBay and the creation of new "sweat shop" labor, called gold farms, by gamers in developing countries who are paid to generate online income. Some TOS agreements have not been modified to reflect this off-line economic activity. *Shadowbane* prohibits selling in-line money off-line as well as notifies users that anything that exists in the criminal code also applies in their world (though it is hard to imagine what portability most criminal code might have) (Ubisoft, 2007). *Second Life* claims that Linden Dollars do not have a real world equivalent, but they do not explicitly ban the trading of Linden dollars outside the game [28]. Indeed, the "real" world has been bleeding into *Second Life*. Politicians, college campuses and marketers all have appeared in *Second Life*, though some experiences have not yet been completely positive (Fass, 2007).

Social networking sites offer a less clear distinction because the sites themselves are not games and the terms of service require some level of authenticity to join. Interestingly, one of the mandates of establishing a *Facebook* page is that you use your real name and information [29]. As with many other aspects of the service, it isn't clear how strictly these prohibitions are enforced. However, the tacit understanding is that you create an identity that reflects your off-line persona.

*MySpace* too includes language in the TOS that prohibits the impersonation of someone you are not. The language of their TOS is especially relevant given the recent cyber-bullying case against Lori Drew. Lori Drew was charged with cyber-bullying that led to the death of teenager Megan Miere. She was initially found guilty of a misdemeanor for violating the *MySpace* terms of service agreement (Bazelon, 2008). The *MySpace* TOS states that no one can be "impersonating or attempting to impersonate another Member, person or entity." [30] Much of the case hinged on Drew's knowledge of the terms of service and its interpretation (Zetter, 2008).

Recently, District Court Judge George H. Wu dismissed the charges against Drew because the case would set a precedent of using the TOS as a vehicle for criminal convictions with which he was uncomfortable (Zavis, 2009). Wu's actions might call into question the larger applicability of the TOS, at least when used by the government to charge someone with a "real" world crime, but *MySpace's* ability to control the actions of its users was not put to the test. The implications of making terms of service agreements legally binding for actions in the "real" world have yet to be fully realized. Ultimately, the regulations governing the cross-over affects between gaming and non-gaming environments, virtual and non-virtual worlds remain broad and undefined. As these games continue to take on greater social and economic significance, there will be legal recognition in the real world of their overall impact.


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## IV. So what does it all mean?

Our lives have become integrally intertwined with computer-generated realities — from the basic economic transactions necessary for everyday life to membership in social networking programs such as *MySpace* or *Facebook*, to the construction of identities in synthetic worlds such as *Second Life* or *World of Warcraft*. In all these spaces, given the necessity of exchanging information to make digital worlds work, concepts of privacy, free speech, and copyright are disrupted.

The popularity and expanding nature of virtual realities suggest that there is something compelling individuals to shift their social interaction to virtual spaces and thus opt out of what many would consider more “traditional” community structures. Virtual identities are increasingly an important aspect of individual identity. These constructions, while allowing room for individuals to play, create interesting questions regarding privacy rights, authenticity, and control over identity.

As mediated spaces, the virtual world layers on the individual new opportunities for constructing reality and controlling their interactions with others, whether it is through *MySpace* or *Second Life*. However, given the governing architecture of virtual worlds, one must consider that the future is not democratic — individual actions are circumscribed by property rights and strict contractual control. A tension exists between the governance structures as developed in EULAs and TOS agreements and the underlying expectations of users to generate more participatory and democratic forms of governance [31]. As Jankowich notes, “Code and authoritarian EULAs can become the primary law that participants encounter and they remain subject to arbitrary decision-making by proprietors. This power imbalance and lack of effective means of redress suggest significant governance problems.” [32]

Furthermore, privacy in these spaces is an antiquated concept and one is left to live life in full view of others. While the transition to the virtual world will be complicated and rough, virtual life will be different and not all non-virtual legal concepts will be equally portable. The social implications of virtual life have yet to be fully explored. The simulational reality of virtual lives, while appropriately postmodern, do leave us questions about authenticity. Certainly, one can expect a backlash against the distinctly anti-democratic terms of TOS agreements, but it would also seem that the rush to be networked at some level continues without significant disruption. We should be vigilant to ensure that the concepts we value in the non-virtual world, concepts such as democracy and free speech, continue to have meaning in our new virtual lives. 

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6. Castronova, 2005, p. 59.
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8. Castronova, 2006, pp. 68–85.
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10. Fairfield, 2009, p. 831.
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12. *Ibid.*
13. Balkin, 2006, pp. 102–103.
14. PlayNC.com, Section 6.
15. *MySpace* Terms of service, Section 8.
16. *Second Life* Terms of service, Section 1.2.
17. *Second Life* Terms of service, Section 4.1.
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21. Sony Online Entertainment, n.d., Section C.
22. *Shadowbane*, Submissions.
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25. Thompson, 2007, p. 74.
26. *Ibid.*
27. *Second Life* Terms of service, Section 6.2.
28. *Second Life* Terms of service, Section 1.4.
29. *Facebook* Terms of service, Section 4.
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