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Who's In Charge of Who I Am?: Identity and Law Online

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As we enter this new century, and particularly at this conference, identity online seems full of opportunity. Someday "gaming" identities will be indistinguishable from "real" identities -- just as "ecommerce" has become indistinguishable from "commerce." Control over online avatar identities will have (and already have) many real-world consequences, because these identities will include our credit records, our shopping lists, our unique homepages that exist nowhere else, our job records, personal references, medical history, and academic transcript. As soon as something is valuable and persistent, we seek to associate rights and duties with it. What will be the law of online identity to which those rights apply? And what will those rights be?

So far, in the mainstream dialogue we are hearing the traditional responses to any new technical development that has a rich human interface -- a category into which online identity unquestionably falls. First, fear ("is someone going to steal my identity?"), and second, fiscal opportunity ("how can I make money from identity?"). But people in the gaming community are already focusing on what real, rich identity is online from a human perspective, and who is in charge of it. The question before us is: Who can destroy a life online?

A set of preliminary responses to these questions about law, rights, and destruction is suggested in this essay. First, online identities are emergent. Identity is by definition a group project, something created by the context in which the identified operates. Identity is not a matter of "rights" that we can think of in the abstract or in advance. Thus, having some centralized one-size-fits-all "law of identity" (and associated rights) does not make sense: the context for identities does not arrive before us fully formed, and different groups have and will continue to have different ways for dealing with identity-removal questions.

Second, just as we are getting comfortable with the idea of these contextual, group-shaped, customized online avatar identities, it is disturbing to learn that online intermediaries (the companies who create online spaces -- now, games, but in the future, walled worlds) now have "ownership" of online identities (and reputations), together with hooks allowing them to remove identities they don't like. Such ownership does not seem to fit the context of online identity.

Third, it does not look as if traditional sources of law will assist in rationalizing this state of affairs. Indeed, traditional statutory or judge-made law is most likely to act as a one-

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way ratchet in this context, either supporting without question the actions of online intermediaries to remove identities, or promulgating centralized rules about identity that are unenforceable as a practical matter.

If we individual players/avatars/users were kings, what would we do to address this problem? This paper presents a few possible responses. The reality is that we will not be kings in these walled worlds. The people who erect the walls will have a great deal of power that they will be unwilling to devolve. But they may have to, given how networks work: an administrator that makes its walled world hospitable to groups (and defers to group "rulings" about identity) will make that walled world wildly successful.

1. What is identity online? As defined by the United States General Accounting Office, "identity theft or identity fraud generally involves 'stealing' another person's personal identifying information . . . and then using that information to fraudulently establish credit, run up debt, or take over existing financial accounts."² It is amazing that the GAO has undertaken the task of describing "identity theft." It is not surprising that the GAO has emerged with a crabbed description of identity.

Identity, I want to suggest, is not just credit card data or clickstream information or address details. In *The Presentation of Self in Everyday Life*, Erving Goffman (1969) suggested the notion of identity as a series of performances, where we use 'impression management' to portray ourselves appropriately in different environments. Some part of identity is controlled by the individual, but most of identity is created by the world in which that individual operates. We can think of identity as a streaming picture of a life within a particular context. Each of us has multiple identities.³

To be sure, subsets of identity data can be used in slices -- to authenticate for the "truth" of who an actor is, to signal permission to enter a particular area, and to permit associations across areas, for example. But identity is much broader than these mechanical matching practices. It is all of these data points, plus more. The being perceived by others (in games/walled worlds, the avatar) is that being's identity, and that

² U.S. General Accounting Office, *Identity Theft: Greater Awareness and Use of Existing Data Are Needed*, H.R. Rep. No. GAO-02-766, at 23 (2002).

³ *See, e.g.*, Clarke, Roger A. "Human Identification in Information Systems: Management Challenges and Public Policy Issues." 7 *Information Technology & People* 4, 6–37 (1994), at <http://www.anu.edu.au/people/Roger.Clarke/DV/HumanID.html>. "[I]dentity is used to mean "the condition of being a specified person" (Oxford, 1976, p.533), or "the condition of being oneself ... and not another" (Macquarie Dictionary, 1981, p.879, definition 3 of 9). It clusters with the terms 'personality', 'individuality' and 'individualism', and, less fashionably, 'soul'. It implies the existence for each person of private space or personal *lebensraum*, in which one's attitudes and actions can define one's self....The dictionary definitions miss a vital aspect. The origin of the term implies equality or 'one-ness', but identities are no longer rationed to one per physiological specimen. A person may adopt different identities at various times during a life-span, and some individuals maintain several at once. Nor are such multiple roles illegal, or even used primarily for illegal purposes. Typical instances include women working in the professions, artists and novelists, and people working in positions which involve security exposure (such as prison warders and psychiatric superintendents)."

being's identity is shaped by the others who interact with him or her. Identity and reputation go hand in hand, as individuals gain reputations that are connected to particular contexts and groups.

2. What may happen to these online identities? Right now, email addresses are the most widespread form of digital identity in cyberspace. Email addresses do not seem very rich or meaningful, and having recently been through a substantial change of email address I can attest that losing this particular element of identity leads to very few consequences other than less spam. If an avatar is walking through an online world as "you," however, making friends, doing work, and transacting in all kinds of ways, loss of that digital identity will be far more meaningful. Future (non-game) online worlds may be far more serious, as we usually understand that term, than games -- they may have consequences for our wallets and our way of life. They may involve transactions that are more and more inseparable from our "real" lives. I am not saying that the complete, florid reality of Snow Crash will be on us tomorrow, but it does seem that something like an early version of Snow Crash is already happening. Cyberspace users may be getting used to the idea of identity online that is different from identity offline: identity that is "unbundled" and exists only in an online space may be a concept whose time has now come.

Online walled gardens will become more prevalent, as concerns about security, viruses, spam, and the unknown increase, as valuable content is made accessible only to those who have been permissioned to see it, and as hardware and software systems made available to the masses increasingly taken on "trusted" aspects.⁴ Online games are precursors of these future, more serious, walled garden online worlds. Key characteristics of both games and walled worlds are limited access, clear boundaries, rules, roles/players, and feedback mechanisms that create reputation. As Professors Bradley and Froomkin make clear, these characteristics of games make them ideal laboratories for experimentation with rulesets, particularly in an era of increasing harmonization in the real world.⁵ David Johnson suggests that new kinds of

⁴ A rumor recently swept mailing lists to the effect that someone from the RIAA had suggested that users should be identified with digital certificates before being allowed online. While the RIAA denied saying this, it is true that such a "drivers license" would be a benefit for the content industry. Anonymity is the enemy of control. Walled gardens will provide the control that the content industry seeks. See, e.g., Jonathan Weinberg, *Hardware-Based ID, Rights Management, & Trusted Systems*, 52 STANFORD L REV 1251 (2000) (discussing Intel's Pentium III architecture, and Intel's Processor Serial Number and its function as a globally unique ID for Internet-connected computers); Ross Anderson, *Trusted Computing' Frequently Asked Questions*, at <http://www.cl.cam.ac.uk/~rja14/tpa-faq.html>: "Identification could be required as a precondition for access to cyberspace using law, technology, or a combination thereof. Using law, the government potentially could regulate access to cyberspace whether access is obtained through government-subsidized or private ISPs. In the case of private ISPs, the government could require the ISPs not only to require identification as a precondition to access, but also to keep logs of cyberspace users linking their cyber-aliases to their real world identities. Further, the government could provide ways in which legal process could be used to compel private ISPs to respond to authorized law enforcement requests for identity information."

⁵ Caroline Bradley and A. Michael Froomkin, *Virtual Worlds, Real Rules*.

organizations may arise in the online context, as we begin to take the screen seriously -- and understand its ability to allow new kinds of roles, new kinds of writings, and new kinds of visible interactions to shape our imagination. My view is that games can provide warnings about identity issues that may arise in "serious" walled gardens.

Choosing (and holding on to) an online identity in an online world is likely to become even more meaningful in the future than it is now. At the moment, who I play in Everquest is certainly meaningful, if I obsessively work at improving the life and abilities of my character. But in the future, in this next generation, who I play in Everquest may morph into the question of who I play generally online, and whether who I play has just bought a house or a car, and whether who I play has a new job contributing to a peer-production group effort of some kind, and whether who I play has a sterling reputation. Who is in charge of this identity becomes something I care about. When people pay attention to something, and want to associate rights and duties with it, they talk about law.⁶

3. Should we have an international (or national) "law of identity"? Because identity is an emergent group project -- in a permanently beta, contingent form -- it is difficult to imagine how anyone could write an effective "law of identity" or a "bill of rights" of the identified. "Those who act badly under the Terms of Service of walled worlds have a right to notice and arbitration before an international online identity tribunal before their identity may be affected or destroyed" seems like a nonsensical legislative enactment in this richly contextual arena. What if the "walled world" is a private listserv, or a thinly-populated chat room? Would it even be possible to enforce such a centralized rule? How would the putative enforcer know what "identity disputes" to address? How would the enforcer even know that a dispute about identity had arisen? Many of these same issues have arisen in the data privacy context, and it is fair to say that enforcement of privacy rules has proven to be extremely difficult. What does "notice of affected identity" mean in a world of swirling, undifferentiated bits? And won't the groups who transact in a

⁶ See Gavin Carter, *The Adrenaline Vault*, March 28 2002, quoted at gamegirladvance.com: "I purchased Camelot from Mythic and have put considerable time into my character; if I wish to earn a profit, they should not seek to stop me. Mythic cannot claim ownership of my time. At the center of this debate is the question of ownership of property, items and characters in MMOGs [massively multiplayer online games]. Too often, the meaning of ownership is misconstrued. By moving to stop secondary sales, Mythic is claiming your virtual property legally belongs to them. Consequently, they can force you to use the property however they see fit. Their justification is that you are paying your monthly fee to "rent" the property. This bizarre argument baffles me. For starters, players have already paid their one-time fee to acquire the install disc, which for most titles costs as much as standard commercial releases. Secondly, the issue of ownership is immaterial. Whether players like it or not, Mythic exerts dominion over the characters and items of Camelot's world, meaning the developers can alter or delete anything. Thus, when selling an item outside of the game world, one is merely transferring the right to use the particular object or character to another person. Mythic still retains ownership -- and absolute power -- over their virtual world and everything in it no matter who is paying the monthly rental fee. This is a case about rights, not ownership. Mythic is trampling our rights as gamers, and so far we are allowing it, and even welcoming it in some cases." Although the "secondary market" is a different issue from the "vanishing/banishment" issue, the two are closely related. People have come to believe that if they have invested a great deal in their characters, they should have "rights" in those characters, and game administrators should have corresponding duties.

particular walled world want some say in what happens to the identities of their members? A single "law of identity" is likely to be even more difficult to articulate (much less enact into law or enforce) than privacy rules have been. On the other hand, individuals who are dependent on the continued actions of their avatars for their livelihoods will seek assurances that these identities will not be frivolously altered or destroyed by walled-world administrators.⁷

Group jurisdiction over identity management in walled worlds is unexplored territory. But because such groups will likely be more easily mapped to (and trusted by) individual users, their assertion of some say over what happens to identities and reputations is very likely to occur whether or not legal rules exist supporting this assertion.⁸ Groups, after all, will have assisted in creating these identities.

3. What are the relevant existing rules about identity in walled gardens? Just as we are getting comfortable with the idea of these contextual, group-shaped, customized online avatar identities, it is disturbing that to learn that online intermediaries (the companies who create online spaces -- now, games, but in the future, walled worlds) now have "ownership" of online identities (and reputations), together with hooks allowing them to remove identities they don't like. These providers may not be very accountable or transparent. And their rules may be effectively unreviewable by any terrestrial court or legislature. This means that online intermediaries will be handing out "law," whether we like it or not. Online intermediaries are a different source of law than those we are used to (like courts and legislatures). This difference presents both opportunities and risks. We will start with the risks.

a. Risks. As several online services (such as MSN, EA, and AOL) ramp up to provide a platform for all online interaction, bringing hardware and software and single-signon benefits into one seamless secure walled-garden whole, how they treat identity becomes more relevant.

One representative example of how online services treat online identity is found at the MSN Gaming Zone. MSN says:

⁷ In the gaming world (which is a precursor of future, more "serious" walled worlds of transactions and work), such altering and destroying has unquestionably taken place. "Full purges can be great fun if you are bored...wipe a tenth of the persona file, randomly. This way everyone worries it may be them... Personally, I used to like going onto a game as a wizard and threatening someone... [Admins] are there for the people above them to abuse, but as a sideline, they are there to abuse the people below them... To be successful at being a "big" arch-wizard you need to be extremely arrogant... wipe them and all of their friends out in one fell swoop. Make a point of doing it loudly... The odd act of kindness, like say, making a novice with a cute name a wizard, can really annoy people who have been playing for months..." Written by Michael Lawrie, aka Lorry, for MYST back in 1991. More serious alterations have occurred as well. See, e.g., The Age.com.au, September 16, 2002 (20,000 players of Warcraft III kicked off for cheating; banishment extended for two weeks, and win-loss records were permanently deleted).

⁸ Paul Schiff Berman, *Globalization of Jurisdiction*, is instructive on this point. Why should we privilege state assertions of jurisdiction over non-state assertions? Groups online will have (and should have) some jurisdiction over identity questions, as a matter of self-enforcing norm development.

1. *Microsoft reserves the right to immediately terminate or suspend a user's Zone.com account for violations of our Code of Conduct.*
2. *Microsoft also reserves our right to amend or change the Code of Conduct at any time without notice. You agree to periodically review this document to ensure you are doing your part.*⁹

This means that, in MSN's discretion, they can decide whether to terminate a user for any action they view as violative as their (mutable) Code of Conduct.

AOL says much the same thing:

*America Online reserves the right, in its sole discretion, to terminate your access to all or part of this site, with or without notice.*¹⁰

And Electronic Arts retains similar discretion:

*If you, or anyone using your Account, violate our online conduct or Content standards, EA.com may take action against your Account. We may issue you a warning about the violation, or we may choose to immediately terminate your account. You acknowledge that EA.com is not required to provide you with notice before terminating your Account, but it may choose to do so.*¹¹

It seems clear that the current state of play is that identity chosen in a particular online world (such as the world of MSN, AOL, or EA, or any subworld within those contexts) can be wiped out by the intermediary who runs the online world. Such an event would not be subject to First Amendment scrutiny.¹² A private online intermediary has no particular legal requirement to be neutral as to viewpoints or actions of users.

⁹ <http://www.zone.com/zxxx/help/zonehelpcodeofconduct.asp>.

¹⁰ <http://www.aol.com/copyright.adp>

¹¹ <http://www.eagames.com/official/thesimsonline/home/index.jsp>, link to Terms of Service.

¹² See, e.g., *Noah v. AOL Time Warner, Inc.* (261 F. Supp.2d 532 (E.D.Va. 2003) (where plaintiff claimed that AOL violated his First Amendment rights by briefly terminating his account, allegedly in response to his pro-Islamic statements, court finds that AOL is not a state actor and so the First Amendment cannot support plaintiff's claim); see also *Hudgens v. NLRB*, 424 U.S. 507, 513, 96 S.Ct. 1029, 47 L.Ed.2d 196 (1976) (First Amendment does not protect against actions taken by private entities, rather it is "a guarantee only against abridgment by government, federal or state."); *Green v. America Online*, 318 F.3d 465, 472 (3d Cir.2003) (noting that AOL is a "private, for profit company" and rejecting the argument that AOL should be treated as a state actor); *Cyber Promotions Inc. v. American Online, Inc.*, 948 F.Supp. 436, 441-44 (E.D.Pa.1996) (rejecting the argument that AOL is a state actor). It is also clear that the intermediary retains the discretion not to eliminate any particular identity. See, e.g., *Noah* at 6: "The plain language of the Member Agreement makes clear that AOL is not obligated to take any action against those who violate its Community Guidelines. Thus, the Member Agreement provides that AOL "has the right to enforce them in its sole discretion," and that "if you ... violate the AOL Community Guidelines, AOL may take action against your account.'" Paul Schiff Berman, *Cyberspace and the State Action Debate: The Cultural Value of Applying Constitutional Norms to "Private" Regulation*, 71 U.COLO. L.REV. 1263, 1302-5 (2000) (state action is unlikely to apply to ISPs, given that we don't really "live" in cyberspace.)

Courts will defer to extraordinarily broad (and ever-changing) terms of service for these online worlds.¹³ So the law of identity online is private, contractual law. The use of force online -- the removal of identity -- has been handed over to private parties.

Because an intermediary's control will trump any legal requirement found in the "real world" to be neutral, the possibility for abuse exists. One can imagine particular online worlds kicking members out whose actions (graphical or text-based) don't fit the values of clerks working in the compliance department of the online intermediary. Particularly if you have invested a great deal in your life in a particular online world, and have gathered a rich reputation through your persistent involvement in relationships with others online, you may be quite upset to lose that investment because of pique on the part of the intermediary. And you will have no meaningful recourse.

Who owns identity? Who owns reputation? From the intermediary's perspective, software creates rules that control what social context can be moved elsewhere. Your identity is "really" a database entry, and the intermediary can argue that your identity is their intellectual property, not yours. You may attach great importance to it, but this identity (and its reputation) will not as a practical matter survive outside the world in which it was formed. Walled world designers have incentives to raise switching costs and capture all the value of this reputation. In other words, controllers of online worlds are gods. But users may defect from environments that attempt to constrain them in how persistent their reputations and identities are. The difficult task for developers/intermediaries is how much freedom to give their users. This takes us from the realm of risks to the realm of opportunities.

b. Opportunities. It is true that online intermediaries very readily defer to national laws regarding content, and are likely to do the same when it comes to identity.¹⁴ It is also true that there will be attempts from some sectors to encourage providers of online worlds to kick off users. For example, in this country ISPs have been asked to terminate subscribers that were filetrading.¹⁵ But given a service provider's fervent desire to hang on to as many subscribers as possible, it is unlikely that service providers will be receptive to requests to terminate their customers. It is far more likely that they will be very cautious in responding to requests to terminate, even when pressed by governments or well-funded industry sectors, for fear of the precedent that might be created by acceding to such requests.

Similarly, it is unlikely that service providers will internally be trolling their online worlds, looking for subscribers to zap. The monitoring costs of looking for "bad"

¹³ So far, my research has not revealed cases in which members thrown out of services have successfully challenged these contracts. If you know of such a case, please let me know.

¹⁴ Yahoo examples.

¹⁵ Verizon.

behavior are substantial.¹⁶ And every subscriber is a no-cost revenue stream, as long as the service doesn't spend any time looking at what those subscribers are doing. Service providers, by and large, want to remain dumb and are not by nature devilish. They want to get as many people as possible interested in their online worlds.

Additionally, as long as we ensure that users have choices at all -- in other words, as long as membership in MSN's walled garden is not required for your online life to continue¹⁷ - - users will have ultimate control over their identity. This means that online individuals retain the ability to leave the roles they have taken up online. (I am not saying this will be an easy thing to do; indeed, your investment in your online identity may be such that leaving it is extremely painful.)¹⁸ This situation is arguably different from that prevailing offline, in which most people retain the gender and race identities they begin with. We may be able to go elsewhere online, so arbitrary removal of identity (unlikely in the first place) may be less than death online.

But, short of exit, we may have other options online that allow us to route around extreme actions of intermediaries. The online world provides opportunities to construct an identity online with the help of others. Blogs are a good example. A blog provides the chance to proclaim your identity, link to other blogs, and present an impression with each post. Group interactions, just beginning now, provide even more interesting ways to construct an online self. The "social software" discussion going on right now is dealing with questions of online identity. Games already allow groups to do very interesting things.¹⁹ Gaming conflict brings comrades together in the tribal relationships that humans crave.²⁰ As real work becomes a more common online activity (in addition to buying airplane tickets and keeping a diary), identity created in connection with groups will be more and more meaningful. Why, though, should intermediaries care about the groups whose interactions they facilitate (as more than aggregates of individual subscribers)?

¹⁶ When COPPA was put into effect mandating monitored chat rooms for children online, most services reacted by simply dropping chat for kids. Providers of online worlds are low-margin businesses, and are likely to become more so as revenues for providing online access continue to drop.

¹⁷ See Eli Noam, *The Internet: Still Wide Open and Competitive?*, at TPRC, September 2003. http://intel.si.umich.edu/tprc/papers/2003/200/noam_TPRC2003.pdf (finding "pronounced horizontal and vertical trends of concentration in the Internet sector"); CCIA report, *Cyberinsecurity*, October 2003, <http://www.ccianet.org/papers/cyberinsecurity.pdf>.

¹⁸ See, e.g., F. Gregory Lastowka and Dan Hunter, *The Laws of the Virtual Worlds* (forthcoming in the *U.Penn. Law Review*) ("Is the option of virtual exit real if you have to give up family, friends, property, and your very form?").

¹⁹ As the Multiplayer Online Games Directory puts it, "What would an RPG be without guilds???" Guilds often have many staff positions, can tax their members, can provide health coverage, and generally provide an identity for the user.

²⁰ See, e.g., Arthur Jacobson, "Origins of the Game Theory of Law and the Limits of Harmony in Plato's Law," 20 *Cardozo L. Rev.* 1335 (1999) (contrasting idea of law as an instrument for achieving harmony, and playful law needed for games in which conflict exists).

We know (and MSN and EA know too) that the total value of a communications network grows with the square of the number of the devices that it interconnects. This is Metcalfe's Law, named for Bob Metcalfe, the inventor of the Ethernet. But we also know that "[n]etworks that support the construction of communicating groups create value that scales *exponentially* with network size," much more quickly than Metcalfe's law.²¹ This is David Reed's law. In other words, if ordinary networks scale at a N^2 rate, where N is the number of subscribers who want to reach all the other subscribers and do peer-to-peer transactions, networks that facilitate group communications (like team rooms, chat rooms, discussion groups etc.) will scale at a rate of 2^N , because potential groups can form easily and people can find others who share their interests.

Where Metcalfe's law is dominant, because a network is seeking to add many new users, one-to-one transactions are the most important communications that take place on that network. But where Reed's law is ascending, collaboration and jointly-constructed value become the most important content distributed by the network, and the formation of groups the key longed-for activity. David Reed calls these changes "scale-driven value shifts." A frequently cited example of a 2^N kind of network is eBay, whose affordances allow individuals to easily form marketplaces.

Human nature will always tend towards group-ness. We care deeply about 12-15 people, and we are probably not capable of caring so deeply about more than that number. Psychologists call this "channel capacity." But we also know that humans have "social channel capacity" (caring, but not so deeply) for about 150 people.²² It turns out that functional fighting units are often about 150 people in size. Similarly, there are very few successful gaming guilds that are larger than 150. (Online worlds are good subjects for social network analysis.)

Reed's Law will be important to walled world administrators. Networks that want to scale at a 2^n rate will want to facilitate easy group formation (particularly of groups that are about 150 strong). Users may even exit if group interactions are not facilitated as part of the walled world. The single most important action a world designer can take to improve a walled world is to increase the bandwidth of social interaction. This means, in turn, that identity created in the context of group work should be particularly respected by online intermediaries. That's the kind of identity an online intermediary will want to encourage, in order to keep its network strong.

Indeed, network administrators that do not facilitate (and defer to) the workings of groups will have to expend more energy moderating their worlds than those who do defer to group jurisdiction over identity. To the extent any network administrator wants to retain the ability to turn off troubling identities, aggregate information (how is the group behaving?) is easier to watch over than individual information.

²¹ David P. Reed, That Sneaky Exponential—Beyond Metcalfe's Law to the Power of Community Building, <http://www.reed.com/Papers/GFN/reedslaw.html>.

²² Robert Dunbar, British anthropologist. See Barabasi, LINKED.

4. If individuals were kings, what would they do to address this disconnect between group creation of identity and intermediary control over online existence?

a. Ensure choices of online intermediaries are real. It is very clear that no one is going to stop an online intermediary from cutting off a user. These intermediaries set their own laws and serve as judge and jury. Courts routinely defer to such decisions, citing the very broad language of intermediaries' terms of service. The ratchet here may be one-way: governments and interest groups will want a lever over private online intermediaries that they can use to ensure that a disliked user "disappears." It is essential, therefore, to keep choices of online intermediaries available. This is the role of antitrust law. But individuals also have a role in ensuring that choices remain.

b. Demand visible online laws and disclosures relating to identity dealings by online intermediaries. The key insight here is that games and online worlds give us the opportunity to understand law by seeing it. It may be that we have never really understood regimes to which we are subject because we have not seen them for ourselves. We see the buildings and the texts, but in order to understand these things as institutions and laws we need interpreters -- we need lawyers. In the online world, we have a chance to understand law directly, as it is applied, without making an analogy or writing a paragraph. This visual presentation of law will allow us to make the direct connection to comprehension without an intermediate step.

There will be many interesting questions with which we will grapple:

- Should we (can we) make the interaction of real-world identity law with online intermediary law visible? Should we show when someone has been "disappeared" by an intermediary for failure to adhere to a particular nation's rules?
- Will an intermediary ever show anyone voluntarily what it is up to when it comes to questions of identity? What legal enforcement mechanisms are needed? or can this entire development be left to market pressures and the perceived need for an "identity seal"?
- What would be made visible? The fact that someone's identity has been taken away, and the reasons why? Or speech-related actions of the intermediary that have an impact on identity (but are less than "disappearing" someone?)
- What about reputation? Is it right that a user must leave her reputation behind when she leaves a particular online world? Is "reputation portability" possible? Or is reputation so context-dependent that the online world should be permitted to own it? And what does the online world "own," exactly? A group-created construct?
- Is this entire problem avoided by staying out of "walled gardens" and maintaining our own domains? Will this be possible, as online worlds become more and more attractive, and as hardware and software increasingly intertwine? Will we have to live in the online equivalent of Ted Kaczynski's Montana cabin?

In order to understand the rules that affect our identities online, we should be able to see them. If we see them (and, indeed, are part of these decisions), we should be able to act on them by leaving intermediaries who are acting abusively (or at the direction of a third party with which the individual doesn't agree). We should demand and use patterns of identity decisions to help us decide which intermediary to trust. Requiring publication of such patterns does not mean requiring publication of private individual data. We need to be able to understand the trends that our intermediary is displaying (with our help), and compare them to others' activities. Establishment of a seal program would be a key step towards making identity-removal visible. Another key step might be to have removals of users' identities made possible only if the online community agreed -- a sort of online death penalty procedure. Because identities are contextual and mutually-created, it makes sense to have the community involved in deciding whether they will persist or not.

c. Join groups -- and then route around any attempt to squelch identity. One key way to retain identity is to link yourself to others. This may seem paradoxical. But if the identity of a member of a functional group is attacked, the group can move elsewhere -- intact. By forming groups within these online worlds, individuals can create identity that cannot be taken away because it resides within the minds and memories of others. And intermediaries will be interested in facilitating these groups because of the 2^N impact on the overall health of their networks.

d. Take seriously the idea of group banishment. I have not, perhaps, made enough of the severe losses that might accompany a loss of identity caused by an intermediary. Given the elaborate and ever-increasing investments that people will be willing to make in walled worlds, the loss of someone's reputation (her win-loss records) may have a real impact on her ability to make a living. One approach to this disconnect may be to establish within new walled worlds the idea that the community is responsible for government. This means that only the community can act together to trigger rustication of a member. No one can take such an action unilaterally. As Raph Koster reminds us, "In the end, it boils down to the fact that the best government is the one that you can trust, which will be the one you know personally: the people close to you in your virtual community, who are held accountable precisely because of community ties. Your best government is going to be each other, because the man behind the curtain isn't going to know you any more than you know him."²³ Banishment can be the tool that enforces the community's rules.²⁴

²³ Raph Koster, *The Man Behind the Curtain*, essay at <http://www.legendmud.org/raph/gaming/>.

²⁴ See, e.g., Paul Schiff Berman, *The Globalization of Jurisdiction*, 151 U. PA. L. REV. 311 (2002) (overview of jurisdiction literature; asking why non-state actors should be privileged in the consideration of jurisdictional questions). See e.g. David R. Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367 (1996) (advocating the self-regulation of cyberspace as a jurisdiction independent of territorial sovereigns); Dick Morris, *Direct Democracy and the Internet*, 34 LOY. L.A. L. REV. 1033 (2001) (advocating direct democracy via Internet mechanisms).

Conclusion.

We are still at the early stages of the first two steps in dealing with any technology: fear and opportunism. Enlightenment is not far away. I want to suggest that we skip quickly through the fear, linger on the opportunism (for the good it will do for the job situation in San Francisco), and move on to human betterment. This social benefit may come (as so many good things do) from playfulness. Games have a great deal to teach us about how we establish and maintain identity. Now we need to consider who is in charge of these identities. It may be, in the end, that we are.

We need to forge a direct link between how we live and work online (especially within walled gardens) and how we structure control over online resources. If the new mode of work online is collaborative peer-production of resources, who will own a shared online space of identities? This ownership may have to be collective. The fundamental problem that is yet to be addressed is that while reputations and identities are group projects, legal ownership of collectively-created intangible identities currently appears to reside (by default) in online intermediaries. We may need to make some noise about this and ensure a better fit. Perhaps the game should belong to the players.