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Back to the Future: Regulation of Virtual Worlds

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Picture, if you may, an academic conference where one of the main topics of discussion is the regulation of an unspecified new technology. Each speaker makes a presentation that advocates a specific type of regulatory approach. One makes the case for public sector control of the new environment; the second speaker proposes that the solution can be left to private entities through self-regulation and the existence of a social contract between stakeholders; the third proposes that regulation can be hard-wired into the system; while the last one believes that the new technology warrants a "hands-off" approach from regulators. Any person who is even vaguely familiar with regulation theories, will recognise some of these arguments and would assume that the debate took place between 1996 and 1999, and that the technology being discussed is the Internet.

However, this debate does not date from 1996; it is a very rough sketch of a panel on the regulation of so-called virtual worlds that took place during the latest State of Play conference in Singapore in August 2007. Those interested in the growing body of scholarly literature dealing with the regulation of virtual spaces, such as Massively Multiplayer Online Games (MMOGs) and social 3D spaces such as Second Life, will recognise that there is something eerily familiar about these regulatory discussions. This sense of déjà vu is caused by the fact that we have been here before, and the debate has already been conducted in international institutions, legislatures and courts across the world. The problem of course is that there seems to be little room for such arguments. As English football fans are keen to remind the world, they think it's all over, it is now.

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It has been eleven years since John Perry Barlow published his seminal Declaration of Independence of Cyberspace,[1] in which he warned governments of the world to stay out of the Internet. While a large number of academics consider Barlow's Declaration to be a quaint reminder of the early days of the Internet in which people believed that the new technology warranted an entirely different regulatory approach, nowadays one could easily exchange the word Cyberspace with Metaverse,[2] and it would undoubtedly be adopted by some of today's Web activists.[3] At the heart of what some call the cyber-libertarian argument is the presumption that the technology is so new, so groundbreaking in some basic manner, that it requires an entirely different manner of regulation, if any at all. Those who fall into this camp tend to see Cyberspace (and now the Metaverse) as a separate country that cannot be bound by outdated rules and norms.

The problem with such arguments is that governments of the world have been proving time and time again over the past decade that they are more than capable of exercising some manner of control over online activities. Even back in 1997,[4] there were those sceptical of the cyber-libertarian rhetoric, as it seemed clear that regulators would attempt to draft and implement rules for the digital realm, something that could be undoubtedly performed through technological means. Hard-wiring protection into systems has become just one of the many weapons in the arsenal of those who would like to keep a lid in the technology. Although Digital Rights Management (DRMs) and other similar technological solutions have had a mixed record of success, it is undeniable that the argument of regulation by architecture has been a pervasive feature of the last decade.

Similarly, the most efficient manner of governmental control has been a type of regulation at the gates, the guarding of the choke-points if you may. While this was initially attempted unsuccessfully by trying to make ISPs liable for the content posted on sites hosted by them, it was soon clear that this strategy would not work properly, which prompted a series of legislative solutions that included liability exemptions for intermediaries.[5] The so-called Firewall of China presents countries with a reasonably effective model of gateway control, which includes a large numbers of blacklisted sites and domains, but it has also been very successful in recruiting search engines and portals into performing censoring functions for them.[6]

If the Internet has been reasonably regulated by a host of international institutions, private entities and governments, then it should be surprising that there are those who

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[1] http://homes.eff.org/~barlow/Declaration-Final.html

[2] The Metaverse is a literary creation, just like Gibson's Cyberspace. The Metaverse first appeared in Neal Stephenson's 1992 novel *Snow Crash*, which describes a virtual reality version of the Internet. Some worlds, such as Second Life, have claimed to be directly inspired by Stephenson's Metaverse.

[3] And indeed, it already has. See: http://bellainsecondlife.blogspot.com/2007/07/independance-declaration.html

[4] Boyle J, "Foucault in Cyberspace: Surveillance, Sovereignty, and Hard-Wired Sensors", *University of Cincinnati Law Review* 177 (1997).

[5] For example, the Electronic Commerce Directive (00/31/EC).

[6] More examples of successful government regulation can be found here: Goldsmith JL and Wu T, *Who Controls the Internet? Illusions of a Borderless World*, Oxford: Oxford University Press (2006), Chapter 5, pp.65-87.

persist in translating the same cyber-libertarian argument that we have heard before into virtual realms. Here we must ask the same question that we do of Internet regulation; is there something so unique about 3D spaces, online games and virtual communities that warrant an entirely different regulatory approach? The answer, at least to me, seems to be a resounding no. I will go even further and claim that most of the legal solutions applied to Cyberspace can be translated into the Metaverse with little or no effort.

Permit me to use the example of Jurisdiction to illustrate this claim. One of the most contentious issues in Information Technology Law during the last decade has been the application of national legislation to a medium that is international and distributed almost by design. The main stumbling block in the jurisdictional arena is to try to determine how and when courts can exercise their authority to legal and natural persons from other countries. Another problem is whether content providers to be subject to the entire jurisdictions of the world just because their works are available in that country. Should this editorial be subject to Argentinean defamation law because it can be viewed there? Although these questions are undoubtedly difficult, that does not mean that there have not been attempts at answering, sometimes even with some logical decisions.[7]

Now, transpose the Cyberspace arguments to virtual worlds. Can an action that takes place in Second Life be regulated by a court in the UK? The answer should be, why not? There are two types of virtual worlds; global and regional (or national). *Global virtual worlds* can be accessed by everyone with an account and an Internet connection (examples of these are EvE Online and Second Life). *Regional virtual worlds* (World of Warcraft, City of Heroes, and Lineage) can only be accessed by residents of a specific region or jurisdiction, which means that there is a clear geographical separation of content between different servers. There are many reasons for the existence of regional virtual worlds:

- Technical: regional or national servers tend to have less connections, which is cheaper to run and maintain;
- Language: some games may need to make changes to the clients in order to allow language modifications;
- Social/cultural; the game may not have a global appeal, and players may prefer to play with other people who speak their own language;
- Legal: it makes more sense to try to reduce potential liability by having regional servers that comply with specific legislation.

The very enforcement of these regional services is another example of how the regulation of virtual worlds is not only possible, it is a reality. When signing up to a game or virtual environment, users must set up an account. This can be limited to users connecting from a range of national IP addresses, or the provider could make payment restrictions, i.e. you must have a bank account in X country in order to create the account. Such vetting of potential users serves to impose *de facto* regulation into the environment by tying users through End-User Licence Agreements (EULAs), payment methods, and even liability by potential identification through their Internet Service Provider.

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[7] Amongst others, see the Australian decision *Dow Jones v Gutnick* [2002] HCA 56.

Being impressed by the technological advances heralded by the Metaverse is understandable. The technology has countless potential to yet again change the way in which we conduct some aspects of our lives. I believe for example that virtual worlds may have an effect in formal distance communications such as distance learning and teleconferencing. However, the amazement at the beauty of the new technologies should not blind us from the fact that governments will find ways to regulate whatever is required, and unfortunately, will probably end-up regulating things that do not require any action. If we can learn only one thing from history, in ten years time we may be talking about the Metaverse in the same terms as we talk about Cyberspace. There may not even be a difference between both.

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