Summer 6-1-2009

Introduction [to the Symposium]

Joan M. Shaughnessy
Washington and Lee University School of Law, shaughnessyj@wlu.edu

Recommended Citation

Joan M. Shaughnessy, *Introduction [to the Symposium]*, 66 Wash. & Lee L. Rev. 995 (2009), https://scholarlycommons.law.wlu.edu/wlulr/vol66/iss3/3

Introduction

Joan M. Shaughnessy[*]

On October 3, 2008, scholars from a number of disciplines convened at Washington and Lee University School of Law for a symposium entitled *Protecting the Virtual Playground: Children, Law, and Play Online.*[1] This issue of the Law Review collects the papers presented at that symposium.

The symposium explores the benefits and risks that virtual worlds pose for children and the ability of existing law to reduce those risks without undue cost. Virtual worlds are the result of rapid technological advances over the past decades. Although they have their roots in fantasy games,[2] and are accessed through the Internet,[3] virtual worlds, as this symposium demonstrates, have unique features of their own, holding out promise for enriching the lives of children but also creating new dangers.

In her contribution to the symposium, entitled *Play and the Search for Identity in the Cyberspace Community,* Dorothy Singer, a psychologist and expert on children and play, describes the importance of play to children's physical, intellectual, and emotional development.[4] She explains the changing nature of play throughout childhood and explores the effects that different types of play have on children's development.[5] Singer notes that computer play has become increasingly prevalent and explains that, like other forms of play, it has important effects on human development.[6] Although those effects can be positive, Singer raises a number of concerns about the dangers posed by computer play, particularly play with violent computer games. Research

---

    * Professor of Law, Washington and Lee University School of Law, Lexington, Virginia; B.A., State University of New York at Binghamton; J.D., University of Chicago.

    1. The symposium was sponsored by the Frances Lewis Law Center and the *Washington and Lee Law Review* and was dedicated to the memory of Professor Louise Halper, who was director of the Center until her untimely death in June 2008. Audio and video feed of the symposium is available at http://law.wlu.edu/lawcenter/page.asp?pageid=776.

    2. Robert Bloomfield & Benjamin Duranske, *Protecting Children and Virtual Worlds Without Undermining Their Economic, Educational, and Social Benefits,* 66 WASH. & LEE L. REV. 1175, 1178 (2009).

    3. *Id.*

    4. Dorothy Singer, *Play and the Search for Identity in the Cyberspace Community,* 66 WASH. & LEE L. REV. 1003 (2009).

    5. *Id.* at 1003–11.

    6. *Id.* at 1011–20.

suggests that such play may make some children more aggressive and less cooperative in their interactions with others.[7] Singer notes that much work remains to be done to understand the role of computer play, including virtual world play, in the development of children, but she leaves no doubt about the importance of healthy play for children's growth and maturation.[8]

In their two contributions to the symposium, *A Review of the Effects of Violent Video Games on Children and Adolescents*[9] and *Online Dangers: Keeping Children and Adolescents Safe*,[10] psychologists Jodi Whitaker and Brad Bushman review the literature on the dangers of both video games and the Internet for children. They focus particularly on the dangers of violent and sexual play and expand upon Singer's concern for the negative effects of exposure to, and participation in, such play.[11] They caution that some children may be more susceptible than others to such effects.[12] Whitaker and Bushman also note that exposure to online content can have beneficial effects on children, for example, by helping them develop social skills and form identities.[13] Finally, Whitaker and Bushman suggest that certain features of virtual worlds may magnify their effects, for better and for worse, on children. First, they note that active engagement promotes more learning than passive exposure.[14] They further note that, because children can personally customize the avatars they use in online worlds, they may develop a psychological connection to their avatars.[15] For both these reasons, exposure to harmful activities in virtual worlds may be more damaging than exposure to similar activities in other media, such as television.[16]

Taken together, the contributions of Singer, Whitaker, and Bushman present strong evidence that some kinds of play in virtual worlds can have serious negative effects on children's psychological health. In another contribution to the symposium, *Developmental Implications of Children's Virtual Worlds*, psychologist Kaveri Subrahmanyam focuses on virtual worlds

---

7. *Id.* at 1022–29.

8. *Id.* at 1022–31.

9. Jodi L. Whitaker & Brad J. Bushman, *A Review of the Effects of Violent Video Games on Children and Adolescents*, 66 WASH. & LEE L. REV. 1033 (2009) [hereinafter *Review*].

10. Jodi L. Whitaker & Brad J. Bushman, *Online Dangers: Keeping Children and Adolescents Safe*, 66 WASH. & LEE L. REV. 1053 (2009) [hereinafter *Online Dangers*].

11. *Review, supra* note 9, at 1034–48; *Online Dangers, supra* note 10, at 1054–57.

12. *Review, supra* note 9, at 1048–51.

13. *Online Dangers, supra* note 10, at 1057–60.

14. *Review, supra* note 9, at 1035.

15. *Online Dangers, supra* note 10, at 1059–60.

16. *Review, supra* note 9, at 1035.

designed specifically for children.[17] Subrahmanyam finds reason to be more encouraging about the likely effects of children's virtual worlds on their participants. She notes that, for many children, online and offline worlds are connected.[18] Children's use of online worlds parallels their real-world play.[19] There is also reason to expect that children will communicate online with those they know in the offline world.[20] These observations suggest that, for many children, their virtual worlds may be as safe or safer than the real world they inhabit.[21] As Subrahamanyam notes, her observations are preliminary and much more research is needed to understand the impact of children's virtual worlds.[22]

The work of psychologists presented at the symposium suggests both reason to be concerned about the dangers of virtual worlds and caution about how much remains to be learned about the impact of virtual worlds on children's health and development. In such a context, the question of the role law should play in regulating virtual worlds is a particularly difficult one. Contributors offered a number of different perspectives on this problem. Legal scholar Robin Wilson, for instance, turns her attention to the problems raised by children who play in adult spaces in virtual worlds, particularly those who become involved in sex play. In *Sex Play in Virtual Worlds*, Wilson explores the applicability of existing criminal laws prohibiting sexual exploitation of children to virtual sex play.[23] Wilson concludes that, in many states, an adult who engages in virtual sex with a child may be subject to prosecution.[24] In other contexts, the law has criminalized sexual behavior aimed at children, even if no touching is involved.[25] Those laws are justified by the harm premature sexualization causes to children's emotional and psychological development.[26] Wilson emphasizes that, in virtual worlds, participants interact directly and that sexual content created by one participant is aimed directly at a particular

---

17. Kaveri Subrahmanyam, *Developmental Implications of Children's Virtual Worlds*, 66 WASH. & LEE L. REV. 1065 (2009).

18. *Id.* at 1074.

19. *Id.* at 1075–76.

20. *Id.* at 1081–82.

21. *Id.* at 1075.

22. *Id.* at 1082–83.

23. Robin Fretwell Wilson, *Sex Play in Virtual Worlds*, 66 WASH. & LEE L. REV. 1127 (2009).

24. *Id.* at 1134.

25. *Id.* at 1146–53.

26. *Id.* at 1146–47.

recipient.[27] If that recipient is a child, the child has suffered the very type of harm the criminal law intends to prevent.[28]

In her contribution, Wilson relies on the expertise of other contributors, among them virtual world specialist Edward Castronova. Castronova's article, *Fertility and Virtual Worlds*, demonstrates that technology has progressed to the point where sexual encounters in the virtual world are fully interactive and increasingly realistic.[29] They bear more relationship to actual sexual encounters than they do to traditional media depictions of sexual acts.[30]

In their contribution, *Protecting Children and Virtual Worlds*, Robert Bloomfield, host of the virtual-world talk show, *Metanomics*, and attorney Benjamin Duranske explore additional legal avenues for regulating virtual world conduct directed at children.[31] They share with Wilson the concern for children's exposure to increasingly realistic and frequently graphic sexual activity.[32] They look to existing criminal laws against obscenity and child pornography and argue that those laws could reach much of the dangerous content to which children are exposed.[33] Like Wilson, they emphasize the realism and the user-generated nature of virtual world content to argue that criminal laws can be applied in this context.[34] In addition to concerns about sexual exploitation of children, Bloomfield and Duranske also raise concerns about possible economic exploitation of children in virtual worlds.[35] Such exploitation, they suggest, might take the form of fraud or of child labor.[36] They note that either is potentially a violation of existing law.[37]

In the latter section of their article, Bloomfield and Duranske return to a theme raised earlier—the benefits that virtual worlds offer to users, both children and adults.[38] Those benefits include new tools for work; for education; and for cultural, social, and civic engagement.[39] The authors caution that

---

27. *Id.* at 1144–77.

28. *Id.*

29. Edward Castronova, *Fertility and Virtual Reality*, 66 WASH. & LEE L. REV. 1085 (2009).

30. *Id.* at 1089–92.

31. Bloomfield & Duranske, *supra* note 2.

32. *Id.* at 1195–1201.

33. *Id.* at 1191–95.

34. *Id.* at 1191.

35. *Id.* at 1199–1201.

36. *Id.*

37. *Id.*

38. *Id.* at 1201–12.

39. *Id.*

regulation of virtual worlds must be accomplished in such a way as to protect beneficial uses.[40]

Legal scholar Joshua Fairfield expands upon the latter theme in his article, *Virtual Parentalism*.[41] Although recognizing the need for legal action against child predators when they invade virtual worlds, he focuses specifically on the benefits of virtual worlds for children.[42] He notes that virtual worlds draw people together, providing a space for valuable shared activities and discussions.[43] Echoing Subrahmanyam's findings, Fairfield further notes that virtual world relationships often reflect real-world connections.[44] Friends, relatives, parents, and children enter virtual worlds together.[45] In such cases, a child's identity will be known or easily detectable by those most able to protect the child.[46] Fairfield argues forcefully that the greatest protection children might find in virtual worlds is that provided by their adult protectors, parents, relatives, and friends, who play in virtual worlds with them and construct careful filters to prevent them from encountering dangerous activities.[47] Fairfield echoes Bloomfield and Duranske's concerns about the potential for regulation to cause more harm than good to children and virtual worlds.[48]

One recurrent issue that Wilson, Bloomfield and Duranske, and Fairfield confront in their three papers is the role of the United States Constitution—specifically, the First Amendment protection for freedom of speech—in restricting the government's ability to police virtual worlds. The issue is critical to the topic of the symposium. As the authors note, the United States Supreme Court has several times struck down congressional attempts to restrict or outlaw electronic communication of pornographic material that may find its way to children.[49] The authors differ in their views of the applicability of these cases to virtual worlds. Fairfield views them as applicable and as limiting substantially the scope of legal prohibition in policing virtual worlds.[50] Bloomfield and Duranske, and Wilson take a different view, arguing that the

---

40. *Id.* at 1212–13.

41. Joshua A.T. Fairfield, *Virtual Parentalism*, 66 WASH. & LEE L. REV. 1215 (2009).

42. *Id.* at 1217.

43. *Id.* at 1220–21.

44. *Id.* at 1222.

45. *Id.*

46. *Id.*

47. *Id.* at 1242–43.

48. *Id.*

49. *See generally* Ashcroft v. ACLU, 542 U.S. 650 (2004); Ashcroft v. Free Speech Coal., 535 U.S. 234 (2002); Reno v. ACLU, 521 U.S. 844 (1997).

50. Fairfield, *supra* note 41, at 1224–31.

unique nature of virtual worlds should lead to the conclusion that the sexual activity occurring in virtual worlds is more often unprotected conduct rather than protected speech.[51] The constitutional debate among the participants is a fascinating one, both for the importance and difficulty of the issue it presents and for the light it shines on the interplay between technological change and legal doctrinal development.

Taking a more global view, the final contributor, public policy scholar Viktor Mayer-Schönberger, considers another challenge to legal control of virtual worlds.   In *Virtual Heisenberg: The Limits of Virtual World Regulability*, Mayer-Schönberger considers structural constraints that limit the ability of real-world regulators to regulate virtual worlds effectively.[52]   He explains that the ability of virtual world providers to move easily from one jurisdiction to another allows them to choose the legal regulatory regime they prefer.[53]   Similarly, the ability of virtual world users to choose among virtual worlds allows the users to choose worlds that constrain them the least.[54]   Both of these factors, Mayer-Schönberger suggests, tend to push providers and users away from restrictions on activities in virtual worlds.[55]   As Mayer- Schönberger notes, there are a number of factors that can and do counter this tendency. For example, cooperation among regulators or between regulators and providers can, he argues, lead to more effective regulatory efforts.[56] However, he further notes various tensions that limit the ability of even cooperative efforts to lead to effective regulation.[57]

The symposium offers numerous valuable insights. The participating psychologists remind us of how vital healthy and age-appropriate play is to children's emotional and psychological development and how much we have yet to learn about how to ensure that online play meets children's needs. The legal and policy contributors demonstrate the ability of the legal system to adjust old categories to novel technology. Those contributions also remind us once again of the real limits on the ability of law to constrain behavior and to

---

    51.   Bloomfield & Duranske, *supra* note 2, at 1188–1201; Wilson, *supra* note 23, at 1162–74.

    52.   Viktor Mayer-Schönberger, *Virtual Heisenberg: The Limits of Virtual World Regulability*, 66 WASH. & LEE L. REV. 1245 (2009).

    53.   *Id.* at 1249–52.

    54.   *Id.*

    55.   *Id.*

    56.   *Id.* at 1255–58.

    57.   *Id.* at 1258–60.

protect our vulnerable children. As Fairfield rightly notes, "The law is no substitute for parental involvement and supervision."[58]

---

58. Fairfield, *supra* note 41, at 1242.

.