Virtual Parentalism

Joshua A.T. Fairfield*

Abstract

Parents, not laws, ultimately protect children both online and offline. If legislation places adults at legal risk because of the presence of children in virtual worlds, adults will exit those worlds, and children will be isolated into separate spaces. This will not improve safety for children. Instead, this Article suggests that Congress enact measures that encourage filtering technology and parental tools that will both protect children in virtual worlds, and protect free speech online.

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* Associate Professor of Law, Washington & Lee University School of Law. Thanks to all the participants of the Protecting Virtual Playgrounds: Children, Law, and Play Online Symposium at Washington & Lee University. Thanks to Russ Miller, Robin Wilson, Joan Shaughnessy, Sam Calhoun, Ted Castronova, Greg Lastowka, and Berin Szoka for comments and suggestions. This Article is dedicated to the memory of Louise Halper, without whose guidance and support this symposium would not have been possible.
I. Introduction

When lawmakers consider kids and virtual worlds, the urge to legislate appears overwhelming. The mix of children and new media has always inspired calls for crackdowns. Plays, novels, comic books, movies, television, and Socratic philosophy were all broadly charged with corrupting the youth when they first appeared. Given the growth of virtual worlds such as *World of Warcraft* and *Club Penguin*, and the explosive popularity of social networking sites and games, legislation may be inevitable.

Laws protecting kids have always been popular and necessary. But parents, not laws, ultimately protect children. This Article argues that parents and communities cannot—and should not—be replaced by laws as sources of protection for children. In virtual worlds, parents play with their children, and

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   The Committee is concerned about reports of explicit content that can be easily accessed by minors on increasingly popular virtual reality web programs. The Committee directs the FTC to issue a consumer alert to educate parents on the content that is available to children on virtual reality web programs. In addition, no later than 9 months after enactment of this Act, the Commission shall submit a report to the Appropriations Committee discussing the types of content on virtual reality sites and what steps, if any, these sites take to prevent minors from accessing content.

   *Id.*


3. See *John Palfrey & Urs Gasser, Born Digital: Understanding the First Generation of Digital Natives* 105 (2008) ("Changes in the law and regulation are not the primary ways to protect our kids, but the role of the state is important all the same. The law, as a general matter, can offer a backstop in terms of keeping children safe.").
online communities have developed norms of child protection. If legislation reinforces these norms, it is a positive development. But if, as seems likely, legislation disrupts communities by separating families out into separate "child-friendly" and "mature" worlds, children will lose much of the protection they currently enjoy in virtual worlds. Virtual worlds are, among other things, communities of real-world people. And, like real-world communities, these communities have their own norms that often operate to constrain behavior. Before we legislate, we ought to note what tools and norms are already in place. Recognition of these norms is an important part of introducing order to virtual worlds. Without such an inquiry, laws might displace useful norms and make things worse.

It is important to note what this Article does not assert. It does not argue that game gods (the companies that create and maintain virtual worlds) should not aggressively seek out and ban sexual predators or assist law enforcement in stopping predators online. They can and must. And this Article does not argue that police should not aggressively investigate and arrest virtual world denizens who target children for sexual gratification. Again, police can and must act against real predators.

This Article makes three limited points. First, that parentalist legislation is likely to disrupt speech and ultimately break up virtual world communities. Second, that this balkanization will isolate children from the very communities that protect them. And third, that communities and the virtual worlds industry may be able to avoid this by developing better filters to protect children in virtual worlds.

4. See id. at 98 ("The best way to mitigate the Internet safety risks that our children face is to combine . . . education, technology development, social norms, and the law.").


6. See Facebook Drops Sex Offenders, L.A. TIMES, Feb. 20, 2009, at A11 (reporting that Facebook has removed over 5,000 sex offenders from its site and MySpace has removed over 90,000 sex offenders from its site); Sex Offenders Face Website Bans, BBC NEWS, Apr. 4, 2008, http://news.bbc.co.uk/2/hi/uk_news/7328170.stm (last visited Sept. 29, 2009) ("Sex offenders’ e-mail addresses are to be passed to social networking sites like Facebook and Bebo to prevent them contacting children.") (on file with the Washington and Lee Law Review); see also Keeping the Internet Devoid of Sexual Predators Act of 2008 (KIDS Act of 2008), 42 U.S.C. § 16915a et seq. (2006) (stating requirements for sex offenders regarding websites).


8. See generally supra note 7 and accompanying text (discussing instances in which police took action against sexual predators).
II. Parentalism and Cyberbalkanization

Imagine that you join a movie discussion group in a virtual world. The discussion is held in the virtual private home of one of the discussants. The discussants, through their avatars, analyze the recently-released and deeply controversial Academy nominated movie, *The Reader*, which involves a complicated discussion of sexual misconduct toward minors, individual guilt, and collective guilt for the crimes of the Third Reich. The conversation veers from the sexual to the political. Because the discussion occurs within a virtual world, members of the discussion group are able to import stills from the movie into the virtual world to underscore their arguments, or are able to shape the reality around them to reflect scenes from the movie.

Imagine your surprise if you and the other discussants were subsequently arrested by the real-world police for lewd and lascivious conduct toward a minor. The reason? One of the "adults" at the meeting was actually a fifteen-year-old boy, posing as an adult avatar. No one at the meeting had the slightest idea that a child was sitting behind one of the adult avatars; in fact, the home was in an area that children were not supposed to enter at all.

This case is intentionally hard. On the one hand, we have real-world laws that apply to conduct between adults and children regardless of the knowledge of the adult. For example, statutory rape is a strict liability crime: It is no defense for an adult to claim that she did not know the age of the minor.

On the other hand, internet anonymity has shaped policy and law online. If website operators were liable every time a child posing as an adult accessed mature content, we would have to shut the Internet down. Therefore, the governing rule thus far has been that the First Amendment prevents the

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11. See, e.g., Commonwealth v. Disler, 884 N.E.2d 500, 509 (Mass. 2008) ("[T]he Commonwealth is not required to prove the defendant’s knowledge of the victim’s age as an element of the crime."); People v. Nyx, 734 N.W. 2d 548, 565–66 (Mich. 2007) ("Because there was no indication that the Legislature intended to abrogate the common law, this Court held that sexual penetration of a victim who is at least 13 but less than 16 constitutes a strict liability offense and, therefore, ‘reasonable mistake of age’ is not a defense.").
application of criminal law to the unwitting transmission of adult content to children.12

This Article explores the hard choices we will have to make in selecting child-protecting laws for virtual worlds. If we are clumsy, we could either leave children unprotected or drive adults out of virtual worlds altogether, functionally destroying the promise of the technology.

A. Cyberbalkanization

Imposing liability on unwitting adults for communications received by minors will cause adults and children to move into separate virtual worlds. We should act cautiously before segregating children from adults online. Scholars have long pointed out the dangers of internet segregation.13 Online forums, blogs, and even news outlets provide information consumers with the necessary tools to confirm pre-existing opinion rather than engage in democratic discourse.14 Fragmented discourse creates an "echo chamber" effect, in which groups that only speak internally reinforce the most extreme positions in the group.15 There are criminal risks as well as political ones.16 Groups with common perverse interests gather online, and reinforce each others’ preferences as "normal."17 These perversion support groups are the stuff of internet legend.18 The creation of these internet backwaters should be of concern to the

12. See infra Part II.B (discussing speech and child protection online).
13. See CASS R. SUNSTEIN, REPUBLIC.COM 2.0, at 21 (2007) (discussing the threat that the ability to filter presents to democracy).
14. See id. at 51–55 (discussing how consumers can obtain information through electronic channels without offering an untested opinion in democratic discourse).
15. See id. at 6, 76–78 (discussing how the characteristics of online discourse creates an environment that fosters extreme positions that normally would not carry any legitimacy through democratic discourse).
16. See id. at 57 (describing at length the criminal risks involved when consumers do not test their views through democratic discourse).
17. See Plasencia, supra note 7, at 17 (commenting on the ease in which pedophiles can interact with others in chat groups). Plasencia specifically stated:
With quick and anonymous virtual travel made possible through the Internet, pedophiles are "logging on" and forming chat groups, swapping pornographic images and sharing true stories of sexual activity with children. This process of bonding with other pedophiles by forming support sites in cyberspace has been referred to as "virtual validation."
Id. (citations omitted).
18. See id. (discussing activities of perversion support groups).
law. Instead, current regulatory approaches will likely create more such backwaters, to the detriment of children.\textsuperscript{19}

There are two additional reasons to be cautious about segregating adults from children. The first is that parental involvement with children’s activities is the best way to keep children safe.\textsuperscript{20} If virtual worlds are segregated into adult and children’s worlds, parents will no longer be interested in the same games as their children, and will no longer play alongside their children.\textsuperscript{21} Second, once responsible adults exit the worlds set aside for children, only those adults willing to lie to enter those worlds—predators—will remain in among the children.\textsuperscript{22}

Segregating virtual worlds will destroy much of the promise of virtual world technology. Some technologies, including virtual worlds, draw communities together.\textsuperscript{23} Virtual worlds are in a serious sense the opposite of the cyberbalkanization process. They revolve around a shared simulated space and involve players in common goals and activities. The design of a virtual world is predominantly the design of spaces and activities for the population—including parents and children—to experience together.\textsuperscript{24}

\textsuperscript{19} See Berin Szoka & Adam Thierer, COPPA 2.0: The New Battle over Privacy, Age Verification, Online Safety & Free Speech, 16.11 PROGRESS ON POINT 1, 30 (2009), available at http://www.pff.org/issues-pubs/pops/2009/pop16.11-COPPA-and-age-verification.pdf ("Here, one must further ask if attempting to quarantine children from adults (however indirectly) actually advances, on net, a strong governmental interest in child protection.").

\textsuperscript{20} See Palfrey & Gasser, supra note 3, at 110 ("Parents and teachers need to become a much bigger part of the solution, and soon.").

\textsuperscript{21} See Szoka & Thierer, supra note 19, at 30 ("A substantial portion of those interactions involve parents talking to their own kids, older and younger siblings communicating with one another, teachers and mentors talking to their students, or even co-workers of different ages communicating. Even when adult-minor communications involve complete strangers, there is typically a socially-beneficial purpose."); see also John D. and Catherine T. MacArthur Foundation, Living and Learning with New Media: Summary of Findings from the Digital Youth Project 39 (2008), available at http://digitalyouth.ischool.berkeley.edu/files/report/digitalyouth-WhitePaper.pdf ("In contexts of peer-based learning, adults . . . have an important role to play . . . . Unlike instructors in formal educational settings, . . . these adults are passionate hobbyists and creators, and youth see them as experienced peers, not as people who have authority over them. These adults exert tremendous influence in setting communal norms . . . .").

\textsuperscript{22} See Szoka & Thierer, supra note 19, at 30 ("Such a quarantine is unlikely to stop adults with truly nefarious intentions from communicating with minors, as systems designed to exclude participation by adults in a ‘kids-only’ or ‘adolescents-only’ area can be easily circumvented.").

\textsuperscript{23} See Sunstein, supra note 13, at 139–40 (suggesting an understanding of the blogosphere as a "huge market" and a "gigantic town meeting"); id. at 49 ("Of course the Internet can bring people together rather than drawing apart. Countless people are using the Internet to build larger and more diverse communities.").

\textsuperscript{24} See Tom Boellstorff, Coming of Age in Second Life 51 (2008) ("The essential
For example, the virtual *World of Warcraft* begins by introducing the concept of a quest—a task that can be performed for some in-world reward.25 Higher level quests require more cooperation, and more people become involved in seeking the same goal.26 The endgame of *World of Warcraft*, commonly called "raiding," involves large groups of people working together in a highly coordinated fashion to achieve complex goals.27 Virtual worlds provide a forum for common discourse. In a virtual world, people from across the political, geographical, and financial spectrum cross paths.28 Many quests or tasks are not possible without a larger group.29 Entire guilds—or groups of groups—must focus on larger problems, such as how to organize a large group of people on a given task over a long period of time.30

And of course, while people play, they talk.31 Like the workplace, virtual worlds have become a setting where citizens talk across the divide. What technology has wrought—separating neighborhoods out because of the low cost of driving to work, and family members from one another because of the search for jobs—technology can now undo. Virtual world technology reconstructs the social systems and the physical systems that were the rule for the majority of human existence.32

Conversation in a guild channel in *World of Warcraft*
resembles nothing so much as conversation around a (slightly rowdy) kitchen table.33

Virtual world relationships reflect real-world connections.34 People do not enter virtual worlds purely anonymously. They do so in groups.35 Groups join servers together, families play together, and (this is the important point) parents often play with children.36 Children know many of the people with whom they interact from real life. Uncles and the occasional aunt are often in-world. Cousins abound. The distances that have dissected real-world families of course do not matter in a virtual world.

Virtual worlds present a compelling mix of fantasy and reality.37 People enjoy content, but enjoy it more in the company of friends and family. Content draws people into virtual worlds, but a real sense of community is what causes people to remain in the world. Many players have no interest in a world that lacks their social network, and often players will return to a given world purely because of the social network that they left behind.

Children are protected by their own communities. Often children have a separate designation within the guild community that they join. For example, in the author’s guild, children of members play alongside their parents, and receive a special guild designation that permits the guild to keep the chat channels that children can hear free of profanity.38

At the same time, children are entering worlds in which rough speech and rough-and-tumble discourse are the norm. Profanity in virtual public spaces is

33. See Castronova, supra note 25, at 100–02 (drawing parallels between virtual world conversation and real-world conversation).

34. See id. at 121 (commenting on the similarities between real world and virtual world relationships); Williams et al., supra note 28, at 31 (suggesting "the displacement of previously existing relationships by new in-game ones").


37. See Castronova, supra note 25, at 107 ("The combination of these efforts produces a society with Earth-like richness and complexity, even though the objects about which this society dances are completely fantastical.").

far more common than is the case in the real world.\textsuperscript{39} Crude sexual or scatological references are quotidian.\textsuperscript{40} Politics\textsuperscript{41} and religion\textsuperscript{42} are also common subjects—and the discussion is sure to cause a dispute with multiple parties chiming in. Political protests, analysis of legislation, party politics, and other subjects are routinely trotted out.\textsuperscript{43} On the other hand, many people avoid such topics—as they do in real life—out of a sense that there are people in the same space who disagree with them. Since guild and group membership is at a premium, users of a space will often moderate their language or defuse conflict in order to get along.

The difficulty is that children may be exposed to rough-and-tumble discourse. Thus, we are presented with a choice between two alternatives: Ban offensive speakers when their speech reaches children’s ears, through the application of criminal or other regulatory law, or improve filtering technology, so that children can share a world with their parents, but can only see and hear what their parents permit. This Article advocates the latter.

The Article develops the idea of this filtering technology below, but it is worth mentioning here that the existence of filtering technology does much to satisfy both the need to protect children and the need to preserve speech. Imagine that one simply enters the world with all other users turned “off.” A parent would only permit the child to be able to speak with and hear another user that the parent truly knows. Thus, without one whit of regulation, the question of rough chat or of predators who seek to use online contacts to foster offline meetings can be resolved through parents’ self-help. Those people simply cannot interact with—in fact would not even exist with reference to—the child.


\textsuperscript{40} See Boellstorff, \textit{supra} note 24, at 151–65 (discussing the common use of sexual references in virtual worlds).

\textsuperscript{41} See Sunstein, \textit{supra} note 13, at 80 (noting that politics is a subject that often comes up in conversation in virtual worlds).

\textsuperscript{42} See Boellstorff, \textit{supra} note 24, at 185 (noting that religion is a common conversation topic in virtual worlds).

\textsuperscript{43} See Sunstein, \textit{supra} note 13, at 46–57 (discussing popular topics of conversation in virtual worlds); see also Peter Ludlow & Mark Wallace, \textit{The Second Life Herald: The Virtual Tabloid That Witnessed the Dawn of the Metaverse} 171–72 (2007) (recounting protest movements within the virtual world that "smacked of politics").
We are in very real danger of not following this path, and instead relying on the usual mix of laws to jail speakers who unwittingly transmit content to avatars that turn out to be run by children. The problem is that if speakers are liable for this content, free discourse within virtual worlds will be compromised. Rather than suffer the risk of being overheard, adults will either turn off the most promising technology for cooperation and discourse that we have seen in some time, or they will segregate children into separate worlds.

B. Speech and Child Protection Online

The usual argument is that we can protect either speech or children. This Article argues that this is a false choice, and that free speech values are an integral part of any system that seeks to protect children in virtual worlds. At a minimum, people should be free to speak up about dangers to children in virtual worlds without fear of reprisal.

An example may clarify the problem. In 2003, Michigan philosophy professor Peter Ludlow published an account of teen virtual prostitution in the world *The Sims Online* (TSO). Ludlow had developed an online journal, called the *Alphaville Herald*, which chronicled events within TSO. Electronic Arts, the creator of TSO, subsequently banned Ludlow’s avatar, wiping out the significant investment Ludlow had made in his reputation in that world. The *Alphaville Herald* was forced to move to a different virtual world—*Second Life*—and ceased reporting on events within TSO.

From the Ludlow event we can see that game gods can use their power to banish users in order to suppress reports of situations that are dangerous to and exploitative of children. And one can imagine a legislative response to the Ludlow banning—for example, a law that protects whistle blowing in virtual worlds—that would protect both speech and children. Such a law could be modeled on federal whistleblower statutes that forbid reprisals against those who reveal certain types of information.

46. *See id.* at 5–8 (describing the establishment and works of the *Alphaville Herald*).
47. *See id.* at 12–14 (describing Ludlow’s expulsion from TSO).
48. *Id.* at xv.
49. *See id.* at 13 (identifying a situation in which a person publishing questionable materials got banned from a virtual world).
But the conflict between speech and child protection cannot be entirely assumed away. There are some things that adults should be able to say and do that children certainly should not hear or see. Working out rules that permit children and adults to safely interact, while protecting the maximum amount of speech possible is therefore a worthwhile goal.

A full treatment of First Amendment and child protection issues is beyond the scope of this Article. Instead, this subpart examines the First Amendment literature as applied to virtual worlds, and then looks at some Supreme Court cases that have encouraged technological filtering as a less restrictive means for blocking content to minors, while permitting adults to speak freely.

This Article is not the first time that the First Amendment has been invoked in discussions of virtual worlds. Jack Balkin, Eric Goldman, Peter Jenkins, and I have all talked about the First Amendment from a number of different perspectives. The initial difficulty with applying the First Amendment to virtual worlds has been that the most common censors—the game gods—are private parties. Game gods are not yet governments, although they trend heavily in that direction. As a result, most virtual world applications of the First Amendment founder on the state-action doctrine.

Therefore, it is worth noting that, for the purposes of this Article, little of the state-action debate matters. This Article considers the specter of real-world legislative action, not private censoring of speech. Real-world law and
legislation that target online speech because of its content raise no difficulty of state-action.

The second common snag that First Amendment accounts encounter in virtual worlds is the speech/conduct dichotomy. The fighting question is whether communications via virtual worlds are speech, expression, association, or conduct devoid of expressive content. Every novel communications technology must surpass this hurdle. For example, the Court did not recognize that movies were protected expression until 1952. Recognition that the First Amendment protects video games seems to be more quickly forthcoming. Players in virtual worlds communicate using traditional modes of speech—voice and writing—but also can communicate via the shared three-dimensional virtual environment. Thus, virtual world technology is an even richer medium of expression than traditional writing, speech, or movies. There is, therefore, every chance that courts will seamlessly recognize that First Amendment protection applies to expression in a virtual world just as it does to an actor on stage.

53. See United States v. O'Brien, 391 U.S. 367, 376 (1968) ("When 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms."); see also Rice v. Paladin Entm't, 128 F.3d 233, 243 (4th Cir. 1997) ("It is equally well established that speech which, in its effect, is tantamount to legitimately proscribable nonexpressive conduct may itself be legitimately proscribed, punished, or regulated incidentally to the constitutional enforcement of generally applicable statutes.").

54. Rice, 128 F.3d at 243.

55. See Burstyn v. Wilson, 343 U.S. 495, 502 (1952) (overturning its 1915 decision in Mutual Film Corp. v. Industrial Commission of Ohio, 236 U.S. 230 (1915), in which it had determined that movies were businesses, not speech).

56. See, e.g., Interactive Digital Software Ass'n v. St. Louis County, 329 F.3d 954, 957 (8th Cir. 2003). It states:

If the first amendment is versatile enough to shield [the] painting of Jackson Pollock, music of Arnold Schoenberg, or Jabberwocky verse of Lewis Carroll, we see no reason why the pictures, graphic design, concept art, sounds, music, stories, and narrative present in video games are not entitled to a similar protection. The mere fact that they appear in a novel medium is of no legal consequence.

Id. (citations and quotations omitted).

57. See Balkin, supra note 39, at 2046 ("Much of what goes on in virtual worlds should be protected against state regulation by the First Amendment rights of freedom of expression and association."); see also id. at 2053 ("If the state regulates virtual worlds because of the ideas expressed by the players and designers, the free speech principle is surely violated.").

58. See id. at 2054–55 ([M]assively multiplayer games and virtual worlds are becoming recognized as media for the communication of ideas, including every sort of representation and recreation of human interaction . . . . Virtual worlds are a medium of expression, a medium in which you can say things and express things.").

59. See id. at 2056. Balkin states:
Even if players’ interactions in virtual worlds were deemed mere conduct rather than speech—and they are not—it would merely beg the question of when conduct constitutes protected expression. For example, erotic conduct—say, dance—is protected. If Congress wishes to target conduct due to its erotic content, it faces a quite high barrier. On the other hand, if a government rule is unrelated to the content of the expression and only imposes incidental burdens on expression, it is likely to be upheld. Thus, Congress may instead seek a content-neutral approach by restricting only a nonexpressive component, that is, access by minors, but such an approach may not chill protected speech.

In addition, games, particularly massively multiplayer games and virtual worlds, have creative and interactive features that, in some ways, make them even more like speech than motion pictures. Just as the ability to create games is part of the freedom to design, the ability to interact within games is part of the freedom to play. With massively multiplayer games, it is even more obvious that what is going on is participatory. The most sophisticated multiplayer games allow you to tell your own stories and add things to the world in which you are playing. If movies are media for the communication of ideas, so too are massively multiplayer games.

_id._; see also _id._ at 2057 ("Thus, multiplayer games are not like boxing or hockey, whose claims to free speech protection are tenuous. A better analogy is improvisational theater.").

60. _See_ Texas v. Johnson, 491 U.S. 397, 406–07 (1989) ("It is, in short, not simply verbal or non-verbal nature of the expression, but the government interest at stake, that helps to determine whether a restriction on that expression is valid."").

61. _See, e.g._, Schad v. Borough of Mount Ephraim, 452 U.S. 61, 66 (1981) ("Nor may an entertainment program be prohibited solely because it displays the nude human figure . . . nude dancing is not without its First Amendment protections from official regulation.").

62. _See_ Johnson, 491 U.S. at 406. It states:

The Government generally has a freer hand in restricting expressive conduct that it has in restricting the written or spoken work. It may not, however, proscribe particular conduct because it has expressive elements . . . . A law directed at the communicative nature of conduct must, like a law directed at speech itself be justified by the substantial showing of need that the first amendment requires.

_id._ (citations and quotations omitted).

63. _See_ Rice v. Paladin Entm’t, 128 F.3d 233, 243 (4th Cir. 1997); _see also_ Robin Fretwell Wilson, _Sex Play in Virtual Worlds_, 66 WASH. & LEE L. REV. 1127, 1163 (2009) (citing RODNEY A. SMOLLA, LAW OF DEFAMATION § 4.63 (2d ed. 2008)).

64. _See_ Johnson, 491 U.S. at 407. The Court stated:

Thus, although we have recognized that where ‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms, we have limited the applicability of _O’Brien’s_ relatively lenient standard to those cases in which the government interest is unrelated to the suppression of free expression.

_id._ (citations and quotations omitted).
Claims that the government seeks to regulate conduct, not speech, will not avail if the regulation overly impacts the ability of adults to engage in constitutionally protected expression. As the Court noted:

Here the Government wants to keep speech from children not to protect them from its content but to protect them from those who would commit other crimes. The principle, however, remains the same: The government cannot ban speech fit for adults, simply because it may fall into the hands of children . . . . The objective is to prohibit illegal conduct, but this restriction goes well beyond that interest by restricting the speech available to law-abiding adults.

There are two basic problems. First, adults may unwittingly interact with minors who hide behind internet anonymity. If unwitting interactions are penalized, adults cannot speak with one another for fear that the person they are interacting with may be a hidden minor. Avoiding liability would require all adults to limit every word and act to those fit for children. Second, the imposition of age verification procedures, like credit card checks, would limit the ability of some adults to engage in protected expression. As discussed below, where access restrictions for minors would functionally shut down protected expression among adults, courts seek less restrictive alternatives.

Because of these considerations, the Supreme Court has long maintained that the Constitution bars legislators from functionally restricting adults to content "only . . . fit for children." The precedents establish . . . that speech within the rights of adults to hear may not be silenced completely in an attempt to shield children from it. In the internet context, this has meant that, where users of a service are anonymous, criminal liability cannot ride on the unwitting communication of harmful material to users who turn out to be children. For

65. *Infra* note 82.
67. *Infra* note 74 and accompanying text.
68. *Infra* note 75 and accompanying text.
69. *Infra* note 72 and accompanying text.
70. *Infra* note 92.
71. *Infra* note 84.
72. See, e.g., Butler v. Michigan, 352 U.S. 380, 381–83 (1957) (determining legislative restriction on sale of books "tending to the corruption of the morals of youth" unconstitutional because ")[t]he incidence of this enactment is to reduce the adult population . . . to reading only what is fit for children").
74. See Reno v. ACLU, 521 U.S. 844, 855 (1997) (holding sections of Communications Decency Act unconstitutional in part because "there is no effective way to determine the identity or age of a user").
example, "[k]nowledge that, for instance, one or more members of a 100-
person chat group will be minor—and therefore that it would be a crime to send
the group an indecent message—would surely burden communication among
adults."75 Thus, the Court held that the communication of pornographic
material to a person that the content provider does not know to be a child
cannot be grounds for criminal liability because to do so would "inevitably
curtail a significant amount of adult communication on the internet."76

Moreover, this principle is not curtailed by the characterization of a given
statute as strict liability. The Court has repeatedly held that a criminal
defendant must have some minimum chance to determine whether she is
engaged in an activity subject to strict regulation in order for the imposition of
criminal penalties to be constitutional.77 With regard to expression, "the Court
has held that punishment based on strict liability with regard to the elements
that deprive the conduct of First Amendment protections is unconstitutional."78

The difference between an adult who encounters a child in the real world and
one who encounters an anonymous person who could or could not be a child in
a virtual world is significant. Even if we hold the adult responsible for her real-
world actions without considering her knowledge of the minor’s age, we at
least feel satisfied that she had some chance or opportunity to determine who
she was dealing with. Not so in a virtual world.

Congress has had three bites at this apple. The Communications Decency
Act (CDA),79 the Children Online Protection Act (COPA),80 and the Child

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75. Id. at 876.
76. See id. (noting that it would be overly burdensome to First Amendment rights to make
liable senders who do not know if the receiver is a minor).
77. See Staples v. United States, 511 U.S. 600, 619–20 (1994) (reversing conviction of
unwitting owner of converted machine gun); United States v. X-Citement Video, 513 U.S. 64,
66 (1994) (finding an adult video vendor who unwittingly sold tapes that included an actress
who was a minor not criminally liable). See generally Alan C. Michaels, Constitutional
Innocence, 112 Harv. L. Rev. 828 (1999) (detailing constitutional restraints on use of strict
liability). Even where the Court has condoned strict liability, it has required at a minimum that
the defendant have been in such a situation as to be aware of the danger that the activity would
be strictly regulated. See Staples, 511 U.S. at 606 (noting that even public regulatory "strict
liability" crimes require at a minimum that "a defendant know[] that he is dealing with a
dangerous device of a character that places him in responsible relation to a public danger, [such
that] he should be alerted to the probability of strict regulation") (citations omitted).
78. Michaels, supra note 77, at 868.
(providing restrictions of access by minors to materials commercially distributed by means of
the World Wide Web).
Pornography Prevention Act (CPPA)\(^{81}\) all had similar problems.\(^{82}\) Each was struck down. The reasoning was straightforward. Congress can only burden speech if it uses the least restrictive means available to it.\(^{83}\) Traditionally, this has meant that if Congress could achieve its goal through a different regulation that restricted less speech, then the more restrictive legislation could not pass constitutional muster.\(^{84}\)

In internet cases, the Court has imported self-help filtering technologies of communities into this constitutional test. If filtering would protect children from smut, the Court reasoned, then a broad government law providing for liability to people who convey harmful material to minors is not necessary.\(^{85}\) The hook to government action is that Congress could promote filtering through legislative means.\(^{86}\) Further, the Court expressly welcomed the application of filtering technologies to keep children safe in many different forms of internet communication. Thus, the Court noted that “filters also may be more effective because they can be applied to all forms of internet communication . . . , not just the World Wide Web.”\(^{87}\)

This is an invitation to apply filtering technologies to virtual worlds. To make the case concrete: It is possible to filter reality in a virtual world in the way that we can filter websites on the ordinary Internet.\(^{88}\) A simple version of

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\(^{82}\) See Ashcroft v. ACLU, 542 U.S. 656, 670 (2004) (affirming the grant of a preliminary injunction prohibiting enforcement of COPA upon a finding that plaintiffs were likely to prevail on the claim that legislation violated the First Amendment by burdening adults’ access to some protected speech); Ashcroft v. Free Speech Coal., 535 U.S. 234, 251, 256 (2002) (finding that numerous provisions of CPPA violated the First Amendment); Reno v. ACLU, 521 U.S. 844, 870 (1997) (finding provisions of CDA prohibiting transmission of obscene or indecent communications to minors to be content-based blanket restrictions on speech and therefore violative of the First Amendment).

\(^{83}\) See United States v. Playboy Entm’t Group, Inc., 529 U.S. 803, 814 (2000) (”The objective of shielding children does not suffice to support a blanket ban if the protection can be accomplished by a less restrictive alternative.”).

\(^{84}\) See id. at 818 (”Technology expands the capacity to choose; and it denies the potential of this revolution if we assume the Government is best positioned to make these choices for us.”); see also Ashcroft, 542 U.S. at 666 (”[A court] asks what is the least restrictive alternative that can be used to achieve that goal . . . . The court should ask whether the challenged regulation is the least restrictive means among available, effective alternatives.”).

\(^{85}\) See Ashcroft, 542 U.S. at 667–68 (finding that because the Government failed to introduce specific evidence proving that filtering technologies are less effective than the legislative restrictions, the legislative restrictions were enjoined).

\(^{86}\) Id. at 669.

\(^{87}\) Id. at 668.

\(^{88}\) See infra Part III (discussing filtering technology as an alternative to legislation).
this technology is already ubiquitous. A user who does not wish to interact
with another user can enter the term "/ignore." As of that point, the two parties
simply cannot speak with one another within the game. More advanced
applications will be discussed below.

The speech/conduct distinction may yet yield hard cases in virtual
worlds. But it is not hard to discern that Congress’s current apparent
regulatory trajectory will run afoul of established case law. For example, in its
consideration of virtual worlds regulation, Congress has again taken aim at
content, not conduct, by directing the Federal Trade Commission (FTC) to
report on the availability of explicit material to children in virtual worlds. Moreover, commentators expect that the FTC will recommend requiring age
verification by credit card to prevent children from accessing virtual worlds that
adults use. Both the content-targeting and credit card verification elements
have been previously rejected by the Court. The answer should not change
merely because virtual worlds are a novel technology. A more measured
legislative approach would promote the development and use of filtering and
parental control technologies in virtual worlds, in lieu of either a blanket ban on
certain content due to the risk of children accessing it, or of anonymity
stripping measures such as mandatory credit card verification.

C. The Effect of Isolation on Children

It is not enough to note that adult discourse would be fundamentally
threatened by the imposition of legal liability for unwitting interaction with
avatars run by children. This Article also argues that internet segregation will
render children vulnerable. Once all decent adults are driven away from
children—by virtue of their fear of being overheard or duped—then only
predators will remain among the children. Predators, who of course have no

89. See Wilson, supra note 63, at 1164–71 (arguing that virtual sex may be sanctioned as
document consistent with the First Amendment).
90. See supra note 1 (noting the existence of an urge to legislate).
via credit card did not save COPA, because "[u]nder a filtering regime, adults without children
may gain access to speech they have a right to see without having to identify themselves or
provide their credit card information").
93. See Szoka & Thierer, supra note 19, at 30 ("The effect of age stratification on truly
bad actors is likely to be marginal at best—or harmful at worst: Building walls around
adolescents through age-verification might actually make it easier for predators to target
qualms about passing themselves off as children to access online spaces, will not be deterred. This is hardly the state of affairs that the law ought to strive to create.

Predators desire to get children alone, and to generate separation and secrecy between the child and parents or other adults who might stop the abuse. Internet predators are no different, seeking isolated corners of the Internet, generally overpopulated by children, for their abuse. Isolation and secrecy are the predator’s watchwords. Driving adults and children apart in virtual worlds achieves both of the predator’s ends: It gives the predator an adult-free zone in which to operate, and it gives the predator a free hand to inculcate secrecy and attempt to arrange a real-world meeting with the child.

Finally, separating adults from children in online spaces will increase the risk and virulence of bullying or other adolescent-to-adolescent harm. This
risk is as serious a consideration as adult-to-child harm, if only because it is far more common. A major restraining force on child-to-child harm is the presence of responsible adults, who can de-escalate the behavior. Creating virtual playgrounds without adults will increase the incidence and severity of child-to-child harm. Driving responsible adults—including parents—out of virtual worlds that parents had heretofore shared with children would achieve precisely this result.

Instead of segregating children from adults, legislators wishing to protect children should foster and promote the development of tools that parents and teachers can use to protect children in virtual worlds. The best technology for doing this is unsurprisingly the same technology that the Court has previously turned to in its prior internet jurisprudence: Filtering.

**III. Filtering and Virtual Worlds**

Filtering technology presents a unique opportunity for virtual worlds: As noted in Part II.B, above, if virtual-world filtering technology is good enough, Congress must promote this technology rather than enact broad regulatory mandates that are intended to protect children, but inhibit speech. At the outset, it is worth distinguishing between filtering of virtual worlds and filtering within virtual worlds. Virtual worlds can be filtered just like websites. Many virtual worlds, like Club Penguin or Webkinz, are in fact websites. Thus, regular internet filters will work for parents who wish to filter their children’s access to virtual worlds. This kind of filtering technology has been discussed at length in the case law. This Article, therefore, focuses on filtering within virtual worlds. The question is whether the filtering technology available within virtual worlds is good enough to both provide the badly needed protection for children and stave off parentalist legislation. This Article submits that filtering technology in virtual worlds is impressive but still of

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101. *Id.*
102. *Id.*
103. *Id.*
104. See Malesky, Jr., *supra* note 94, at 29 (“[P]arents and/or guardians should be involved with their children’s online activity. They should know who their children communicate with via the Internet as well as not allow them to spend inordinate amounts of time online.”).
105. See Palfrey & Gasser, *supra* note 3, at 110 (“Parents and teachers need to become a much bigger part of the solution, and soon.”).
106. *Supra* Part II.B.
limited availability to players, and that filtering could and should be made better still by the introduction of flagging and reputation systems.

A. Basic Chat Filtering

The state of the technology is changing rapidly, but as of the writing of this Article, there are some basic discernable trends. First, filtering of text, as regards sexual, scatological, or otherwise profane language, is already largely possible.107 If players do not desire to hear coarse language, then they may simply turn on the language filter and the offensive language will be edited out.108 Moreover, characters may filter one another by simply turning off the ability of another person to contact them via the ignore command.109

But these simple filters will not be sufficient to fully protect children or fend off legislation. Current filters will not prevent work-abouts, such as the substitution of numbers for letters (in oft-mocked "Leetspeak") or other inventive use of characters to circumvent controls. Moreover, current filters do not do a good job of filtering inappropriate user-generated content.110 Thus, the following sections discuss not only the power to edit the text that a person sees in a computer-mediated environment but also the power to, in fact, edit that reality so that objectionable content is filtered out for one person, but not for others.

B. Filtering Reality: Instancing and Quest-Phasing

In a virtual world, reality itself can be edited on an individual basis. Instancing technology is especially promising. The largest advance in game play over the past several years has been the advance in the degree to which the

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109. Cf. id. (providing an ignore command filter).

110. Cf. id. (providing filtering options, but with limitations restricting the effectiveness of the filtering).
shared experience of a virtual world can be edited. Players now do not share the same reality, they share overlapping experiences.

The original problem that instances were meant to address was that of scarce resources. Imagine trying to kill Greg the Goblin to get his magical sword. If you must compete with everyone else in the virtual environment for the chance to kill Greg, you may suffer serious frustration. Other players are in line to kill Greg, too. Even if Greg "respawns," or reappears (to give another player a chance to enjoy the same content), other players may simply "spawn camp" or steal the kill.

To deal with problems of spawncamping and killstealing, game designers invented instances. If Greg lives in an instanced cave, when you enter the cave, you actually enter your own pocket universe. In your own "instance" of the cave, Greg is always there. Any other player who enters Greg’s cave will encounter Greg—but not you.

How is this possible? Whenever you enter the cave, the game server generates a one-off copy—a single-player version of the content—of Greg’s cave. Within that cave, you and your friends are the only ones who exist. Other people cannot disrupt your game experience. But this pocket universe is still connected to the larger game world. Once you defeat Greg and return to town, everyone can see the magical sword you won. In town, you have rejoined the rest of the shared experience.

However, in order to experience instanced content, players had to separate themselves from the rest of the shared experience for a while. The next challenge was to make it possible to "edit" reality so that people who shared a common space were actually experiencing different realities in some respects. This next step was called quest-phasing.

Quest-phasing permits a static world to appear to change. The original problem was this: Imagine, in a non-instanced, non-phased world, player A kills Greg the Goblin. Either the game server now considers Greg "dead," and thus no other player can experience that content, or the game server "respawns" Greg into the world.

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111. See Castronova, supra note 25, at 118–19 (explaining the mechanism of "instancing" content which "occurs when a player triggers the creation of content that is accessible to her and no one else").

112. See supra note 111 and accompanying text (describing instancing and its effects).


114. See supra notes 111, 113 and accompanying text (describing instances and discussing their affect on gaming).

Greg, leading to a disruption of the suspension of disbelief—"hey wait," says player A, "I just killed that guy. What's he doing still walking around, much less fighting player B?" Thus, if one player's act changed the world, that disrupted the experience of other players, who wished to perform the same quest. (Of course, the alternative—creating new quests for every player based on the prior actions of other players—is completely impossible from a design standard.)

Quest-phasing fixed this problem.116 If the quest to kill Greg the Goblin is phased, and if player A kills Greg, then for player A, Greg is indeed dead. But because player B has not killed Greg, then for player B, the goblin still lives. Note that for all other intents and purposes, player A and player B share a reality—each sees what the other sees, they can talk, go on other quests together. Their realities differ only when it comes to Greg.

Instancing and quest-phasing show that the technology exists to permit players to edit their realities without sacrificing the overlap, or shared experience, that makes virtual worlds so interesting. The technology filters the world based on the players' past experiences.117 It is not difficult to see how the technology might be extended in the direction of filtering other content. Just as the goblin might exist for player B but not player A, so grown-up content might exist for player A, an adult, but not player B, a child. This reality-editing function could extend to other players as well. A player C might well exist for A, but not for A's child, B. (This is already the case with conversation—B can turn C's ability to speak to B off.)118

These technologies do not exist in all virtual worlds, nor do they work the same way in every virtual world. But the theme—that filtering works in virtual worlds as well or even better than on the mainstream Internet—ought to give parentalist legislators pause. This opportunity also should give game designers food for thought. Filtering technology has a long way to go in virtual worlds. The most powerful technologies are not in the hands of the players—only the game god can spawn an instance or set up quest-phasing. Game gods ought to give players access to good filters if they wish to avoid regulation—especially when it comes to parents who are looking for ways to filter their children's in-game experiences. Further, game gods ought to make the filters that they have

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116. See id. ("As you bring [the villagers] back to your quest hub, those villagers are there permanently for you, whereas if somebody who hasn't done the quest shows up, they don't see them.").

117. See id. (noting that people who complete certain quests will be able to see common things, but those that have not completed the quest will not be able to see those things).

118. See supra notes 107–10 and accompanying text (discussing the filtering technology normally available).
already developed even better—by combining filtering technology with flagging and reputation systems, as discussed below.

C. Making Filtering Better

Filtering can be made even more effective if one embraces its counterpart, flagging. Where filtering edits out content from existence, flagging permits creators of content, or speakers, to identify their content in order to receive a safe harbor and permit better filtering.119 Suppose one were to adopt a rule granting an absolute safe harbor to any speaker or creator of "adult" content (and by this I mean content fit for adult consumption, not merely or mostly sexual content) if that person "flags" the content, or identifies it as containing material for adults.

In turn, filtering software can more easily read the flag. Instead of having to guess whether content is safe or not, the filter can automatically identify and filter out self-identified adult content. In this way, violent imagery, strong language, and even boring academic articles could be flagged as "adult" to prevent damage to unwitting children. A safe harbor for flagged content thus makes filtering more effective.

People could even flag their own conversations. It is common practice in a virtual world to speak in several different "channels" simultaneously. A "say" command causes everyone in the local area to hear your comment. A "gu" command causes only your guild members to hear you speak, no matter where they are in the world. Other channels exist for specific purposes: A "trade channel" permits parties to hawk their virtual wares, while a "local defense channel" permits the organization of player-versus-player combat within the world.

The trick is that channels are a simple form of instancing: You can speak in multiple channels while sharing a simulated physical space with someone else, and the people you are near do not experience all the channels that you do. Thus, it is perfectly possible to have an adult conversation in one channel and a more "PG" conversation in another channel, without spillover. (Okay, there is the occasional spillover, called a "misstell," that is the stuff of internet hilarity, but the point remains a good one.)

People could thus flag their channels "PG" or "M,” the way they currently select channels for other purposes. And it goes without saying that people who do not wish to hear the content would not be obliged to join the channel. Further, parents could set filters such that a child could not access such channels. In short, it is possible to protect adult speakers and child listeners without legislation that threatens to split up virtual worlds.

Once one embraces flagging as a way of enhancing filtering technology, there are all sorts of ways to make filters better. Players might flag not only their own content but also one another. One major system for self-regulation through e-commercial sites is a reputation system. eBay, for example, permits parties to rate one another based on prior commercial experience. This technology is already readily apparent in forum bulletin boards. Many online fora are choked with random, irrelevant, or obnoxious posts. The forum host could opt to review each post, and remove offensive or irrelevant content.

Instead, many sites use a rating system. Posts are rated on their usefulness by the readers. If a post falls below a certain rating, it is not displayed. Thus, objectionable content is edited nearly out of existence by the player rating system. The content is still available, but special effort must be made to access low-rated content.

A reputation add-on to a filtering system could do much to increase the value of the underlying system. If player A encounters player B, who has a bad reputation, player A may already have filters in effect such that player B does not exist as far as A is concerned.

Of course reputation can be gamed, primarily through the practice of reanonymization, where a party who has an unsavory reputation creates a new online identity in order to escape her bad name. But reanonymization does not always—or even often—work because people refuse to deal with someone who has no reputation. For example, in the virtual world Second Life, avatars that have been created very recently are not permitted into many areas because they are likely to be reanonymized users who are attempting to "grief" (harass) other


122. See Boellstorff, supra note 24, at 228 (discussing the evolution of the user rating system in Second Life); Castrow, supra note 25, at 23 (“Human societies rely so much on reputation for their basic functioning that online anonymity seems unlikely to persist in any significant way.”).
players on an "alt" (alternative character or identity) while preventing reputational harm to that player’s "main" (primary identity). 123

D. Commerce, Anonymity, and Filtering

If anonymity is the shield of bad actors, commerce is the sword which pierces that shield. If real money is being exchanged, both companies and consumers must know with whom they are dealing. Thus, the oft-maligned intrusion of real-world economics into virtual worlds is a powerful source of trust and protection for players of all ages.

In COPA, described above, Congress attempted to mandate credit card numbers in an age-verification system for internet users. 124 This served two purposes. First, the credit card number provided pretty good evidence that the person was not a minor. 125 Second, the credit card number tied the customer to a real-world identity. 126 Because of this second factor, the Court found that requiring the disclosure of credit card information chilled legitimate speech, and that the credit card requirement was not the least restrictive means by which Congress could achieve its goals. 127

But there is nothing invasive or chilling about facilitating voluntary disclosure of information by a customer in order to improve filtering. For example, in the virtual world Second Life, if a customer uses a credit card in conjunction with an avatar, then that avatar’s publicly-available profile discloses this fact and states: "[P]ayment information on file." 128

If a user is attempting to remain anonymous from the game god, of course no payment information will be used. But if payment information is on file, this means that the real-world identity behind the avatar may be subpoenaed from the game god. 129 An additional fact: Many game worlds record their

123. See BOELLSTORFF, supra note 24, at 235 ("[T]he ability to join Second Life without providing any identifying information made many residents concerned; they complained that the grid was being flooded with persons bent on griefing, and also that it would be easier for children to enter Second Life, raising issues of ethics and legal liability.").


125. See id. (noting that the statute allows for the establishment of an affirmative defense if a website seeks to identify users by requiring a credit card number).

126. Id.

127. See id. at 667 (finding filters to be less burdensome on First Amendment rights than restricting access online through legislation).

128. BOELLSTORFF, supra note 24, at 235.

129. See Tal Zarsky, Privacy and Data Collection in Virtual Worlds, in THE STATE OF PLAY: LAW, GAMES, AND VIRTUAL WORLDS 217, 221–22 (Jack M. Balkin & Beth Simone
players’ conversations for customer service purposes. Thus, revealing real-world information to the game god goes beyond a simple piercing of anonymity in the event that a player commits a bad act. In virtual worlds, the fact that another user has now disclosed her real-world identity to the game god is enormously useful in determining who to trust.

Online commerce is a powerful force for reducing online anonymity—and thus the threat of online bad acts—without government coercion. The elegance of this system is that it does not mandate disclosure of credit card information—as Congress attempted—but instead permits a user to self-identify as particularly worthy of trust. Those who wish to remain anonymous can do so. They will simply not be trusted as much, and may be subject to filtering, as discussed below.

This fits with norms in virtual worlds. "Alt" characters are often used, as noted above, to engage in bad acts, while "main" characters are much more rarely used for that sort of activity. A player who wishes to harass or grief another player will only rarely do so on her "main" character. And the more egregious the action, the more likely that a player will use an alternative account to commit the deed. Alts are, therefore, routinely distrusted in virtual worlds, since the chance of an alt being a reanonymized player is higher than the alt being simply a new player.

It is of course possible to combine these e-commercial identification techniques with filters. A child’s filter could be set to edit out anyone who has not given their identity to the game god provider via a credit card number. In short, if a child can filter alts, they have removed a powerful tool used by griefers and harassers of all kinds.

IV. Necessary Law Enforcement in Virtual Worlds

Remember what this Article is not saying. This Article does not claim that virtual worlds should not ban sexual predators. They can and must. The KIDS

Noveck eds., 2006) (noting that the identity of a website user may be obtained through the use of the user’s payment information).

130. See id. at 218, 221–22 (noting that conversation in virtual worlds can be stored and used for identification purposes).

131. Boellstorff, supra note 24, at 234–35 (stating that government involvement is not necessary to obtain identification information from users if the users are involved with commercial activities).

132. Id.

133. See id. at 235 (commenting that the choice involved when deciding whether to identify oneself aids in separating the trustworthy from those not so trustworthy).
Virtual Parentalism

Act of 2008, which provides social networking sites with access to the national sexual offender database, also provides civil immunity for suits based on using that database and excluding sex offenders from the social network. Virtual world providers are social networks first and games second. Thus, virtual world game gods ought to have little difficulty claiming the civil immunity of the KIDS Act.

If the KIDS Act is the carrot, then state Attorneys General are the stick. State AGs have now sought, and received, settlements with Facebook and MySpace that require those sites to police their sites for predators and respond quickly to consumer complaints. Although these site operators would be within their rights to stand on their CDA § 230 immunity to claims premised on the bad acts of third parties, they have not chosen to take the risk, and have settled instead. Virtual world game gods would be wise to take notice: Improving filtering technology may affect specific attempts by Congress to legislate within virtual worlds, but good filters, as well as good procedures for responding to complaints, are also necessary to prevent claims from state AGs (as well as the negative publicity those claims generate).

Further, this Article does not argue that police ought not to enforce the law in virtual worlds. This Author has long argued that police and courts need no special adaptations to apply real-world law in virtual worlds. Certain applications of real-world law that do not take into account the unique nature of interactions in virtual worlds, however, run the risk of cyberbalkanization, as noted above.

For example, if police were to pursue claims of lewd and lascivious conduct toward virtual world denizens who had every reason to believe that they were engaged in conversations with other adults, this would first be a clear violation of the First Amendment principles set forth when the Supreme Court

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135. See id. § 16915b(c)(5) ("A civil claim against a social networking website, including any director, officer, employee, parent, contractor, or agent of that social networking website, arising from the use by such website of the National Sex Offender Registry, may not be brought in any Federal or State court.").

136. See Nathan Olivarez-Giles, Internet Social Sites Target Sex Offenders, L.A. TIMES, Feb. 4, 2009, at C3 (stating that information on 90,000 sex offenders using MySpace was turned over to Connecticut Attorney General Richard Blumenthal’s office in response to a subpoena); Jenna Wortham, MySpace Turns over 90,000 Names of Registered Sex Offenders, N.Y. TIMES, Feb. 4, 2009, at B4 (noting that MySpace was pressured into turning over the names of sex offenders in response to a subpoena); Facebook Drops Sex Offenders, supra note 6 (stating that Facebook has removed over 5,000 sex offenders from its site).

struck down most of the CDA, COPA, and CPPA.\textsuperscript{138} And, even if it were not, the enforcement of such rules against such parties would cause people either to abandon virtual worlds technology, or to balkanize the worlds.

Fortunately, police have been sensitive to online constitutional and cultural differences. Police in virtual worlds have followed the trend of chat room enforcement elsewhere. Police do not pursue virtual world denizens who honestly believe they are speaking to other adults, in the privacy of their own virtual homes or within adults-only clubs. Rather, police do the precise opposite: They pose as children, and target those who seek to turn virtual encounters with children into real-world encounters.\textsuperscript{139}

In sum, game gods can and should keep predators out of virtual worlds, and real-world police ought to find and arrest predators inside virtual worlds. But they ought to continue the practice of targeting those who seek out children for sex, rather than targeting anyone who unwittingly provides offensive content that is accessed by children.

\textbf{V. Conclusion}

Parents should play alongside their children. The law is no substitute for parental involvement and supervision. If the statutes that legislators enact, or the common law principles that courts deploy, place adults at risk for being in proximity with children, then adults will exit virtual worlds entirely or will move to separate worlds. This will increase the risk to children, both because responsible adults will not be present to blow the whistle on cultures of secrecy and isolation, and because parents will not be aware of the risks of their children’s behavior since they will no longer share a context.

\begin{footnotes}
\begin{enumerate}
\item See supra notes 76–85 and accompanying text (discussing the cases that struck down most of the CDA, COPA, and CPPA as overly burdensome on First Amendment rights).
\end{enumerate}
\end{footnotes}
Virtual worlds present a thrilling opportunity: They can put communities back together. Parents and children can and do play together in virtual worlds—not out of a sense of obligation by the parent, but because both parents and children find the games fun. Players from across the political spectrum achieve common goals and cooperate. Virtualization technology has a reverse balkanization effect, a regenerative effect on community. Laws that function to exile adults from these worlds both destroy the promise of the technology and actively decrease protection for children in virtual worlds.