Intellectual Property in Synchronous and Collaborative Virtual Space

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This article argues that not all electronic discourse can be treated equally and that synchronous electronic discourse, such as that found in MUDs and MOOs, is sufficiently collaborative that traditional understandings of ownership and intellectual property fall short of describing the medium. Because meaning in synchronous virtual space is generated by collaboration, it is nearly impossible to extract one contributor’s remarks and retain the content of a conversation. This article asks how we can develop property rights and guidelines for fair use when what would be cited and/or otherwise used belongs to a pseudonymous or anonymous group. Finally, this article claims that feminist theory provides a way to understand the importance of alternate ways of understanding authorship in collaborative virtual space.

In 1996, an issue of the journal The Information Society included a special section on “The Ethics of Fair Practices for Collecting Social Science Data in Cyberspace.” The editor of the section, James Thomas, a professor of sociology at Northern Illinois University, gathered a series of papers that investigate the question of ethics as related to research in electronic virtual communities. The articles in the journal address asynchronous online forums as well as synchronous communication in cyberspace. The special section, as a whole, plays a pivotal role in the emerging terrain of cyberspace studies because the ethics of research from both social sciences and humanities perspectives comes to bear on the work scholars do with cyberspace texts. Virtual space poses new challenges—technologically, discursively, and intellectually—for those seeking to analyze and understand the medium. As The Information Society editor acknowledges with that special issue, one of the basic problems confronting academics remains how to conduct research in cyberspace ethically. Although answers to that question are bound to vary based on discipline and theoretical perspective, attempts to respond often hinge on an understanding of how copyright and intellectual property operate in cyberspace. And, as the articles in that journal issue illustrate, the difficulty of defining ethical research principles in cyberspace mirrors the complexity of applying single-nation copyright law predicated on modernist conceptions of a coherent self to a necessarily international and intensely collaborative medium. In

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particular, a central concern of research in and on virtual communities is synchronous communication, and it is in this arena of electronic discourse—real-time exchanges in which individual contributions tend to be intertwined with others—that current understandings of copyright are most problematic.

The question of who owns what in cyberspace does not address the variety of what there is to own. In general terms, the ease of distribution over the Internet complicates tracking and remuneration, but an original design that serves as a background for a company Web site, whether or not it is illegally downloaded at some point, remains the work of the designer. Other components of the Internet, however, result in the production and projection of texts that provide a wholly different set of questions and challenges. Consequently, principles of intellectual property cannot be applied uniformly across cyberspace—not when cyberspace encompasses voice mail, e-mail, Web sites, MOOs, and multiuser multimedia games. Definitions of ownership and property fracture when we rethink the relationship of an individual contribution to a larger social space. Although as teachers we are used to evaluating collaborative processes, collaborative products present different challenges, particularly poly-vocal products. In general terms, computer mediated communication (CMC) urges us to rethink conceptions of authorship, and as Andrea Lunsford and Susan West (1996) wrote, to “understand communicating in an electronic environment as a social activity, as the necessarily collaborative process of creating and consuming information” (p. 395). Their examples of such information are static ones: “letters to novels to treatises, from encyclopedias to journals to news bulletins and stock reports” (p. 395). But revisiting the idea of authorship in cyberspace is more complicated than even their argument acknowledged. When law professor David Post (1996) urged his peers to question definitions of authorship in a computer-mediated composing environment, he argued:

Cyberspace is a world where the very notion of “authorship” is fraught with new complexities. Who is the “author” of a World Wide Web page that contains an interactive game that users can join others in playing, while allowing other users to view comments made by previous visitors (or add their own comments), along with musical accompaniment and short video clips of previously televised news broadcasts? Do we really know enough about the implications of giving “authors” this kind of an ‘attribution right’ to their works? (p. 115)

In this passage, Post pointed to some of the more dramatic challenges CMC poses to an understanding of author, property, and text. Like Post, I argue that some kinds of electronic discourse call for a more significant break with traditional copyright law than legislation has thus far demonstrated. Copyright law is largely able to accommodate the production of asynchronous texts in cyberspace, but text-based MOOs are one of several sites that problematize a monolithic idea of copyright and intellectual property. In part, MOOs raise such issues because MOO communication is a hybrid of speech and writing, a characteristic that requires us to answer the question of whether MOOspace is public or private. At the same time, MOO discourse requires us to consider the concept of fixity upon which copyright legislation hinges, and, finally, it forces us to question the possibility of singular authors in a collaborative space.

As Tharon Howard (1996) demonstrated, even asynchronous electronic discourse requires finessing some points of copyright when it comes to reconciling ethics with legality; MOOspace requires even greater reshaping of copyright law to make it fit with the medium. Real-time chat environments are predicated on collaboration, and it is with this
characteristic that they raise the serious issues to which Post refers. Although MOOs function as a virtual place for both synchronous and asynchronous interaction, they constitute a cyberspace that at each moment contains the experience and presence of others, and thus provide an overall instantiation of synchronous discourse. Although questions circulate among the Internet community regarding how to merge the principles of ungoverned distribution of the net with ownership principles of authorship in a world of commodity capitalism, in MOOs the blurring of programming code and narrative complicates the question of ownership because individual contributions to the space have little if any meaning on their own. It is interaction, either synchronous or asynchronous, that forms the substance of MOO environments.

This interaction makes MOOs and other synchronous virtual reality environments a qualitatively different venue, and consequently, one which generates a different discourse. Copyright protection may seem easily applicable to some arenas of electronic discourse, but, as William Byassee (1995) argued:

Activity in cyberspace . . . creates new relationships among individuals that differ from their analogues in the more usual, physical existence. These new relationships strain legal principles and categories that currently direct judicial power over individual action, either civilly or criminally.

(p. 199)

The tensions Byassee named directly relate to the differences between synchronous and asynchronous discourse and call for the rethinking Post urged.

Although researchers have discussed real-time chat, the peculiarities of synchronous communication have not been addressed in policy-related discussions. It is my contention that synchronous discourse is not only different, but that recognizing its difference holds profound consequences for how public policy towards the Internet develops. That is, synchronous discourse is the site where the role between producer and consumer blurs and is of dramatic importance as we consider the construction of the author. Defining the author and the act of authorship is part and parcel of disentangling the application of copyright to virtual space, not just in the dissemination of original works, but in their creation. Lunsford and West (1996) made a strong case for the very real and high stakes for compositionists in possible changes to "how laws governing ownership of language should be adjusted (if at all) to accommodate both new technologies and postmodern challenges to established ideas about 'authorship'" (p. 383). As they illustrate how electronic discourse embodies Foucault's argument that "the search for an individual as the source of a body of literary 'work' is misplaced" (p. 391), they evoke the argument that cyberspace is the instantiation of poststructural theory, a claim most applicable to MOOspace.¹

Post, although not a teacher of writing, similarly recognized the social and political importance of refiguring the author in cyberspace. This is not a conversation about distributed presence or cyborgs or even simulated selves. It is not about the size of buffers or new clients that archive MOO sessions. On the contrary,

¹A detailed argument about the construction of MOOspace as the instantiation of poststructural theory can be found in Kolko, Beth E. (1995). Building a world with words: The narrative reality of virtual communities. *Works and Days, 13*(1/2), 105–126.
broader, too, than the inquiry of whether affording protection advances the overall copyright scheme or accords with the constitutional meaning of 'writing.' It touches on the very nature of the new social phenomenon of chatting on line, specifically, and communication in the era of the Internet generally. (Brandriss, 1996, p. 276–277)

Cyberspace is, generally, a site of collaboration, but virtual communities, as a writing space, are predicated on the interactive and the recursive. The call and response of MOOing necessitates a rethinking of how the writing self navigates the discursive presence of others. It is precisely the interweaving of selves that occurs in MOO environments that makes the question of intellectual property a thorny one. That is, how do we determine who owns what “sayings” when the boundaries of the sayer blur? Concurrently, when all writing is in essence dialogue, a response to a present and articulating other, how do we know which party can lay claim to which words? Or, as the product of a collaborative act, do texts in cyberspace belong to all who contribute to them?

Although current United States copyright law provides useful guidelines for understanding issues of intellectual property in relation to asynchronous electronic artifacts and discourse such as e-mail, software, and artistic works, the realm of synchronous exchanges has been largely ignored. Once fixed (and digital form does count as fixity according to the 1995 Report of the Working Group on Intellectual Property Rights), electronic works are copyrighted, and thus subject to the general restrictions of U.S. Copyright law, including the author's right to control distribution of the work and others' ability to employ the provision of ‘fair use’ to quote without an author's explicit approval (Armstrong & Snyder, 1995; Brandriss, 1996; Post, 1995a, 1996; Weinstein, 1996). These principles seem largely clear-cut, and they have helped inform both recent legislation and judicial rulings. However, even those who argue that copyright as it applies to electronic discourse can be extrapolated from current understandings—the incrementalists (Brandriss, 1996; Post, 1995a)—realize how the Internet, particularly with the ease of transmission to different countries, complicates national standards on copyright; several legal scholars have focused on the global nature of the Internet and the resulting jurisdictional nightmare of formulating and enforcing national copyright legislation (Burnstein, 1996; Cinque, 1995; Egan, 1996; Geller, 1996; Meyer, 1995; Post, 1995b). This, however, is but one example (and an obvious one) of how deceptively simple the concept of fixity is for actually formulating copyright policy in cyberspace. In particular, synchronous exchanges online raise questions from technical angles and theoretical ones, especially in relation to the idea of an author in a synchronous exchange and the collaborative nature of real-time electronic communications.

To provide a sense of exigency to the matter of determining intellectual property with respect to such real-time chat, I'd like to include something of a meta-example to illustrate the complexity of citation issues, which is what I see as the core ethical question concerning the construction of intellectual property in synchronous electronic communities. The example here is designed to show that even if the legal issue of fixity were resolved with respect to MOOs, ethical considerations necessitate further inquiry. In particular, I read the discomfort of the authors of the following e-mail posts as related to the uniqueness of the MOO discourse environment in its collaborative nature.

I chose as my example a MOO with a clearly defined purpose and a relatively homogeneous membership. I also chose an asynchronous communication forum within the MOO because these appear more print-like to observers of cyberspace, and less speech-like than
real-time conversations. The example is drawn from a mailing list on MediaMOO, called *Research. The list is open to all members of the community, and it is a place for discussing the ethics of research in virtual communities. MediaMOO membership is by application, and the MOO asks that those applying have some interest in media research. Many participants are researchers by trade—whether academics, journalists, programmers, or independent scholars. Thematically, MediaMOO could easily be termed well-defined; certainly the community has a more coherent sense of self (at least publicly) than LambdaMOO, ChibaMOO, or RiverMOO.

My goal here is not to provide ethnographic data of MediaMOO; rather, in a somewhat self-reflexive exercise, I want to illustrate the difficulty I had in drawing from the very productive exchanges on MediaMOO's *Research list. During the last part of 1996 and early 1997, *Research was active, in part, leading to a symposium on "The Ethics of Research in Virtual Communities" organized by Amy Bruckman as part of the MediaMOO Fourth Anniversary celebration. The discussions on the list covered a variety of topics and many comments were some of the most insightful and rigorous examples of cyberspace inquiry; included were messages from anthropologists, sociologists, rhetoricians, journalists, folklorists, psychologists, programmers, and artists. One of the most compelling, and longest-lived, topics from the list focused on the question of when citation from MOO discourse is appropriate, either from a list post or a conversation. Lee-Ellen Marvin, a folklorist from the University of Pennsylvania, known as Luna on MediaMOO, interceded in this discussion with a detailed comment. She wrote:

I guess what most concerns me about research by both journalists and scholars is the assumption that anything on the Internet is available material for research. It is as if words on email lists and within MOOs are published words.

The members of various Internet communities don't think they are "publishing" their words. Rather, from my observations, they seem to perceive their activities as semi-private conversations.

An email list that I read had a huge, months-long battle about whether to allow researchers to study and write about their list. The final vote was "No research." Though they use a public medium (the Internet) they don't see their interactions as "public" expressions.

This decision is consistent with an earlier decision, also made by a vote, that no member of the group should forward or quote another member to an outsider without permission of the writer.

And, I think their decisions are consistent with the Lambda popular vote to require journalists and researchers to get permission of any involved players before publishing their words.

Because it is so easy to "crash the gate" of various Internet parties, it's easy to forget how much time researchers spend, off-line, gaining the respect and trust of research subjects. That need to gain respect and trust is not unfairly expected by members of Internet communities, I think.

Marvin's remarks focused on the key issue of gaps in perception between members of a community and observers of that community. The contributors to this discussion, as both participants and observers in the same larger community of cyberspace, felt a perhaps stronger need to think through ethical considerations because they realized their activities, too, could become fodder for some researcher's project. The particular straw argument for this discussion became the instances of journalists' sloppy research in cyberspace, including the Time magazine cyberporn issue and various pieces penned about virtual communi-

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2See Message 24 on *Research. Thursday December 5, 1996, 23:47:09 EST. This message and all others are cited with explicit permission of the authors. The use of real names and professional affiliations is included according to contributors' request.
ties that cited MOO and MUD characters' dialogue without permission. As a way of pushing past the morass of bad journalism, members took the time to post their differing disciplinary guidelines for research involving human subjects, an issue that encompasses attitudes towards intellectual property and copyright in addition to concerns over safety and fair treatment. Psychology, sociology, anthropology, and education were represented, and there was extensive discussion of government regulations and university review boards regarding human subjects research. Marvin's comment was written in this context, and in part as a response to postings that emphasized the researchers’ right to quote as long as subjects were not harmed. Nancy Williams, known as Nan on MediaMOO, is a print journalist, an assistant professor of journalism at Utah State University, and a former newspaper managing editor. Williams had posted earlier the code of ethics for journalists as part of this debate. In response to Marvin’s and others’ remarks, Williams further explained her point:

What I posted, per request, is the Code of Ethics for “journalists”—not academic journalists, who naturally would abide by standard sociological research ethics when conducting studies that involved human subjects. I am both a working journalist and an academic, and I take exception to the implication that somehow makes me ‘slimier’ than the rest of you.

The fact is, working journalists have different obligations to different publics than do academic researchers. The SPJ Code speaks to the needs of the working journalist, who is obligated to provide information unfiltered by governments or organizations with vested interests in outcomes. Working journalists do not have to be licensed—indeed, there’s an excellent argument for why they shouldn’t be—but this leaves the door open for any sleazebag to claim to be a journalist and go out and wreak havoc. This happens not just in online communities but in newspapers, TV and magazines.³

Williams’ position again draws important distinctions among differing audiences and purposes and the way research guidelines respond to such variance. But many on the list continued to seek out some common ground between disciplines to develop a coherent sense of ethics online, a policy that would accord people some right of privacy and ownership of their words while still preserving the possibility of useful research in virtual communities. Malcolm Parks, a professor of speech communication at the University of Washington, known as Coyote on MediaMOO, tried to bring together several of the ideas generated. He and others sought to somehow integrate the varying disciplinary perspectives and formulate the beginnings of a research methodology for virtual communities. He wrote:

A useful goal for this discussion might be a draft code of ethical practice for research in on-line social settings. We are interested in existing codes for journalists and social scientists because they provide starting points and the more specialized code we derive must be consistent with the principles of those codes. Issues of confidentiality, anonymity, and freedom from harm, to name a few, should guide us both on- and off-line. Toward that end, it appears we are all in agreement on what one feature of our code: No report should contain information that allows the individual character names of participants in virtual environments to be identified. This includes, but is not limited to, the character names themselves and character descriptions. Work? Other candidates?⁴

Parks’ post was met with interest and effort but little resolution. As the date for the symposium approached, discussion moved from a more abstract consideration of the ethi-

³See Message 15 on *Research. Thursday December 5, 1996 03:40:08 EST.
⁴See Message 35 on *Research. Saturday December 7, 1996 14:18:49 EST.
cal principles involved in citation toward a concerted debate regarding whether the symposium itself was going to be logged and considered citable. Marvin’s first comment below is in response to Amy Bruckman raising the issue of whether or not to log the symposium. Because MOO meetings are often thought of as brainstorming sessions—inellectual works in progress—it seems reasonable that a group of academics would hesitate to declare their contributions public and available for citation.

With respect to the posts reproduced below, there are two points I would like to raise. First, the nature of the conversation is worth noting. Comments are brief, not crafted in the same way as academic prose; they often contain typographical errors. These characteristics, common to CMC, mark the discourse as generated in a different venue and, I would argue, are related to the anxiety of citation expressed below. But, second, I would draw even more attention to the collaborative nature of the exchange. Again, this is a characteristic of CMC, a group-based working through of ideas, an intellectual conversation that does not suffer the year’s delay of review and publication of traditional print sources. Difficult thinking is occurring here, and positions are being revised and refined. But the immediate feedback and the playing with possible positions is what allows each participant to arrive at new conclusions. That is, a variety of disciplinary positions are being rethought in light of this exchange, but it is the multidisciplinary nature of the audience, and the collaborative tenor of the ideas, that lends the discussion its uniqueness. Consequently, the discussion is best considered as a whole, not just as individual contributions. The differences Byassee and Post name with respect to CMC are illustrated in the production of meaning entailed by this exchange. In many respects this characterization is no different from the arguments made for several years regarding exchanges on listservs, or, for that matter, arguments about manuscript culture in the centuries predating the printing press. However, a component of my argument is that this exchange does not occur in the venue of e-mail or parchment; rather, the ideas are brought forward in a virtual world, a synchronous environment that is a discursive and interactive space. This specific and unique context merits special treatment of MOO-based collaborative discourse. And although I’ve chosen to reproduce an asynchronous exchange within a synchronous environment for the purposes of this article, I also could have chosen a real-time exchange from a MOO that would illustrate the same principle of embedded contributions that make it difficult (if not impossible) to separate one contribution from another and still maintain the meaning of the whole.

Message 73 on *Research (#6271):
Date: Thu Dec 12 15:16:33 1996 EST
From: Luna (#5585)
To: *Research (#6271)
Subject: quoting

I am with Amy on worries about being quoted. Oddly enough, my concerns are bigger with posting to MediaMOO than to Lambda. I think we need some kind of survey of MOOsters about their perceptions about the *lists, whether they consider their posts to be “public to the MOO” or “Public to the world”, which is what we’re really trying to determine here.

Message 74 on *Research (#6271):
Date: Thu Dec 12 15:19:11 1996 EST
er...meant to -Ask- whether we are trying to determine whether a list is public to the world as well as public to the moo. I'm not sure Amy's idea, as excellent as it is, will solve the problem of unethical quotes by all researchers from all MOOs, but I'd like to see something like that implemented here at MediaMOO.

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Message 75 on *Research (#6271):
Date: Thu Dec 12 15:35:52 1996 EST
From: Amy (#75)
To: *Research (#6271)
Subject: expectations

Well, I don't have any time to do all this coding BUT... we could make certain lists not readable by guests, and we could make people say yes to a short paragraph statement "I understand that posts here are not to be quoted... etc" before they can read certain lists...

--Amy

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Message 76 on *Research (#6271):
Date: Thu Dec 12 15:59:52 1996 EST
From: Coyote (#10608)
To: *Research (#6271)
Subject: Lists

I don't think we are engaging a fundamental issue here—and that's the patently public character of most MOOlists. MediaMOO may be the exception because it imposes a membership review, albeit a porous one. So, here, the lists are public within the MOO. MOO's without selective membership are by definition open to the public and discussions open to all are public discussions by definition. I believe that we are creating new public spaces in MOOs. We are creating more private spaces too, but some steps must be taken to make a public space private. Saying "NoQuote" may be a step, but access only to those who agree to abide by rules regarding citation is more defensible. Doubt if the "noquote" admonishment would stand legally.

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Message 77 on *Research (#6271):
Date: Thu Dec 12 16:12:06 1996 EST
From: Dave (#2167)
To: *Research (#6271)
Subject: A P.S. to Coyote

Another factor to consider is that "guests" can access "research" and it is doubtful they can be required to comply with guidelines (whatever they may be) regarding use of list postings. In that sense, messages to *Research are public and those of us who contribute to it should keep that in mind.

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Message 78 on *Research (#6271):
Date: Thu Dec 12 16:19:04 1996 EST
From: Amy (#75)
To: *Research (#6271)
Subject: guests, agreements
... but there’s nothing stopping us from stopping guests from reading it, and nothing stopping us
making people agree to certain rules before they can read it.

I agree that there’s no legal remedy for violations of this agreement, but we can kick someone off
MediaMOO for it. And most of us here value one another’s opinions, so the censure of one’s peers
is also a potential motivating factor.

—Amy

Message 79 on *Research (#6271):
Date: Thu Dec 12 18:02:28 1996 EST
From: JoeW (#11030)
To: *Research (#6271)
Subject: quoting *lists

It is a slippery slope. Whatever consensus might be forged by participants really have no force. Just
my two cents.

—Joe Walther

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any means without explicit consent of the author is permitted.)

Message 80 on *Research (#6271):
Date: Thu Dec 12 20:31:42 1996 EST
From: Coyote (#10608)
To: *Research (#6271)
Subject: Public space

If I may attempt a summary as a test of a potential consensus. We recognize that MOOS create
public space and that MOO citizens also have privacy rights. In order to protect those rights MOO
citizens restrict access to conversations by several means ranging from paging others in the same
room to send private messages, locking private rooms, and perhaps preventing guests from having
access to *lists and making group membership (and perhaps Moo membership) contingent upon
agreeing with confidentiality (and perhaps other) requirements. In cases where such steps are not
taken, the discourse can legitimately be treated as public discourse.

Message 81 on *Research (#6271):
Date: Thu Dec 12 21:02:30 1996 EST
From: Luna (#5585)
To: *Research (#6271)
Subject: public space

I don’t agree that just because a *list or a conversation is accessible to all players and guests that
we have, as researchers, blanket permission to quote and publish those words. Not until we have a
better sense of what the participants think they are doing. At LambdaMOO, by public vote,researchers and journalists are asked to only quote with permission. Would you go to a club meet-
ing and record the voices of members in face-to-face interaction and then publish those words with-
out permission? Would you publish notes left on physical bulletin boards belong to the club
members without asking for permission?

Message 82 on *Research (#6271):
Date: Thu Dec 12 21:10:29 1996 EST
From: Diane (#3411)
To: *Research (#6271)
Subject: public words

I don’t think the point is as much what YOU would do as it is what SOMEONE will do. Guaranteed that someone will quote without permission, steal the tribe’s music, paste your description into a magazine, or put your last moosex episode in an ftp site. I think the concern here is more about the barbarians at the gate than it is about the genteel cityfolk inside.

Message 83 on *Research (#6271):
Date: Thu Dec 12 21:12:09 1996 EST
From: Diane (#3411)
To: *Research (#6271)
Subject: on the other hand

some barbarians are really good at hiding inside.

Message 84 on *Research (#6271):
Date: Fri Dec 13 00:03:55 1996 EST
From: Coyote (#10608)
To: *Research (#6271)
Subject: Public

The ethical guidelines I rely on for off-line research would not allow me to individually identify people in a public setting or otherwise do them harm. But I could describe their behavior, quote their speech, and so on. Hence quoting people’s comments on Usenet newsgroups is generally considered ok by IRB’s, I believe—as long as the posters can not be identified. Posters’ permission is not necessary. I’d argue that the same goes for public moos that make *lists available to the public. If, on the other hand, I wish to use material that would allow a person to be identified, it is reasonable that his or her permission be obtained. Although, even there, I believe some journalists would argue that there is nothing wrong with individually identifying public figures.

Have I got that right, Nan?

Message 85 on *Research (#6271):
Date: Fri Dec 13 00:04:38 1996 EST
From: Brinkley (#1027(j)
To: *Research (#6271)
Subject: Opening the can of worms wider.

The recent Texaco controversy seems to me a prime example of why being a “private organization” is not in and of itself enough to justify a “no quotations” policy. I should emphasize, mind you, that I have no reason to believe that MediaMOO harbors hidden prejudices and bigotry of the sort that cropped up at Texaco, but the Texaco case *does* demonstrate that ethics often entails more than just loyalty to the rules (formal or otherwise) of “private clubs.” I.e., if we’re going to institute a “gag rule” (and, fwiw, I wouldn’t favor such a policy), I think we need to do so on more solid ground than just the (debatable) notion that we’re a “private club.”

It’s worth noting that the content of this exchange indicates the difficulties I had citing this information. Indeed, because the community members were so far from reaching a consensus about what could be cited and when, I was reluctant to decide based on notions of legality and copyright that fair use meant the exchange was available for citation. It is clear that *Research posters were uncomfortable with “mere” legal precedent. When Dave
asked about legal guidelines for logging, Parks' response illustrated that legal definitions of copyright and fair use fail to take into account the nuances of online discourse:

Hm. . . well, I'm still logging. Others have said they will, too. Even so, the issue is an important one. Is there any caselaw covering the relatively ephemeral text of chats, talk, moo's, muds? I'm not sure, but I am obviously not well informed. Truth is, of course, we are dealing with a case where the law is far behind the technology. The law certainly does not yet acknowledge or understand the *variety of communicative channels on-line. Some are more "texty" than others. The quasi-oral character of much on-line interaction has often been noted. My sense is that the jury is still out.

Thanks Mac

There is no case law acknowledging the subtleties of synchronous electronic discourse discussed in these posts and in the work of Byassee (1995), Post (1995b, 1996), and Brandriss (1996). On the contrary, the conclusions legal scholars draw are often informed by an incomplete understanding of the nature of electronic discourse—particularly because electronic discourse is itself many different things. When Howard discusses the measures researchers should take when citing electronic discussion lists—in particular, that one should consider the writer's and list members' attitudes regarding public and private distinctions and publication corollaries for their communications—he returns us to the difference between ethics and law in this arena. Similarly, MOO community members' unwillingness to prescribe a narrow definition for online discourse, and their hesitation to declare all MOO discourse fair game for citation, must play a part in how we assess intellectual property within real-time chat.

I am also a member of MediaMOO and a poster to *research. Like the posters in the above exchanges, I am uncomfortable with the idea of wholesale citation of MOO posts (even to a research list) in academic articles. Like Marvin, I want to give credit to the participants' reactions in these communities; one of the most important sources of information we have available in untangling the nature of online discourse are those who think, work, and play through online words. Their reactions cannot be dismissed, whether they are academics on MediaMOO, high school students on RiverMOO, or programmers on LambdaMOO. Understanding the nature of communication in a virtual community is important not only to ensure ethical research principles for those observing virtual communities, but also there are real-world, relevant conversations in cyberspace, including the *Research thread reproduced above and the complicated experiments in online democracy. Online activities like these contain crucial lessons for us, as scholars, teachers, and citizens. It is imperative that we think ethically about how to bring online experience into conversation with off-line lives.

On the small scale of this article, the question of ethics and copyright became almost paralyzingly self-reflexive. The article I was interested initially in writing focused on interdisciplinary debates about cyberspace and comments made by a variety of scholars regarding public and private boundaries and ownership. However, those debates have taken place most often within cyberspace, for example, on research lists within MOOs—nontraditional sites of publication and debate. Because the original article was designed to question assumptions about public and private perspectives regarding online discourse and then to question whether MOO discourse should be open to citation in off-MOO venues, it seemed inappropriate and presumptuous to cite unrestrainedly from MOO

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5See Message 209 on *Research. Monday January 20, 1997 00:47:18 EST
communications. However, what was initially an insurmountable obstacle to the core analysis was reworked into a fruitful case study for examining the stakes of deciphering questions of ownership in cyberspace.

This example, I hope, provides a sense of why we ought to care about how copyright and intellectual property will come to be understood in cyberspace and what the stakes are if legality—rather than a sense of ethics that can incorporate the idea of moral law (Schlachter, 1997) into an otherwise economics-based notion of fair use (Ballon, 1995; Denicola, 1980; Kuhn, 1996)—becomes the sole determiner of cyberspace policy. Again, this isn’t just about maintaining access to our objects of study; it is about being able to see the discourse of cyberspace as part of a wider cultural conversation and to find the balance between law and ethics. Robert Denicola (1980) argued that “in the copyright sphere, the task is to reach an accommodation between the first amendment and property interests in forms of expression” (p. 246), whether written or oral. There are a variety of ways one might go about ethically meeting the challenge of how to apply principles of intellectual property to cyberspace discourse. But the guidelines for Web pages must remain different from those for synchronous environments, even for asynchronous communications within boundaried synchronous environments such as the MediaMOO Research list. That is, the particular elements of MOO-based discourse, the collaboration and entwined discursive creations of objects and conversation, necessarily compel us to create different standards of intellectual property for these particular cybersites. For, as Matthew Burnstein (1996) wrote, “the networked world is different and requires a different approach” (p. 82). Any other strategy dismisses the nuances of CMC and constrains our thinking and use of emerging discourses.

Even if we wanted to entertain law as holding the answers, detailed examination of legal code illustrates above all its inability to provide an adequate vocabulary for understanding the dynamics of virtual communities. Cavazos and Morin (1994) argued that, by and large, a careful examination of the U.S. copyright system “seems to hold up rather well” when applied to cyberspace (p. 48). But they eventually acknowledge the inadequacy of current laws to regulate cyberspace when they consider chat environments; they admit that U.S. legal code cannot account for the particular interactions of synchronous communication programs. As they explain, copyright law generally involves words “fixed in a tangible medium,” but the definition of tangible becomes complicated in MOOs. Raw TELNET allows for only brief buffers of text and, as they argue, it would be difficult to claim that those brief moments constitute a fixed medium. On the other hand, the evolution of MOO clients means that large amounts of text can be buffered, and for some clients, such as MUDWELLER and PUEBLO, those buffers can remain fixed until the desktop computer is turned off. To complicate matters still further, when a session is logged, by a participant or observer, and becomes a word-processing file that can be printed and copied, copyright law indicates that the words have then been transferred to a fixed medium and are covered by legislation. This progression is sensible, and fair use

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6 Cavazos and Morin also admit the inability of law to account for the international aspect of Internet communication. They make it quite clear that invoking legal precedent serves little use when participants from different countries access cyberspace via unpredictable and unreplicatable routings. And while a host site is located at a fixed point in space, declaring that particular geography as the defining point has its problems, as illustrated by CompuServe’s experience in Bavaria.
laws and research standards provide guidelines if not answers. A MOO mailing list, however, is an example of a MOO transmission fixed in the database of the MOO, but not in the buffers of individual users (unless a MOO session in which posts are read is logged). The hybrid status of a MOO list is an indication that not all discourse in cyberspace is the same, and although I have argued in the past that legal scholarship provides a way to understand online discourse, primarily because of the notion of the performative utterance, ultimately legal code is an inadequate framework, particularly if we pay attention to the mixed reactions of participants in this arena. Even if a transcript is covered by copyright and thus citable under fair use provisions, what do we make of MOO community members’ reluctance to have their contributions to MOO conversations migrate to venues outside cyberspace? Part of the goal here is to respect the hesitations and concerns expressed by members of various MOO communities and to reconcile their sense that MOO discourse is qualitatively different from traditional print and speech.

Determining fixity is simply not enough. As Brandriss (1996) argued with respect to this question, “the issue of ‘fixation’ [in] RAM has been debated most vociferously... as it applies to making reproductions of an original writing. Interestingly, the question has been less carefully examined as it applies to the original creation of a work” (p. 239). It is the creation of texts in synchronous cyberspace that appear so different and provide such varying challenges to our understanding of intellectual property. Given the nature of a MOO transcript, we have to ask how one determines ownership when the only attributable property is a line or two of disjuncted, and meaningless, text. Who can claim the meaning of an online conversation as “mine” when meaning only exists because of the contributions of many?

For example, what is the status of communications other than a “say” or “page” command in a MOO conversation? Is active listening in a text-based world a copyright-worthy contribution? Are emoting and thought-bubble commentating substantive enough contributions to give the player a claim to the discourse? Clearly, emotes in the environment can affect the way the discourse is shaped. But is an emote an idea? Is it an example of creative and original thought that gives one claim to authorship of the collaborative text? And, if one can lay a copyright claim to emotes, how do we approach the issue of citation and attribution? If, for example, a MOO character pseudonymously, but not anonymously, contributes to a discussion, does the character get quoted? Or the typist? Is another pseudonym attached to the comment to protect the MOO character’s sense of privacy? Ultimately, setting the boundaries of copyright is not about determining fixity because the product is not single-authored, and in most cases, not all authors are identifiable.

If, then, establishing principles of intellectual property in synchronous virtual space cannot revolve around the question of fixity, we must turn to other criteria. At that point, then, it becomes useful to consider how communications in a MOO can be categorized as “oral” or “written” because such a distinction provides another set of guidelines that might be more useful. Communication in a text-based MOO appears as writing on a screen (whether input via a keyboard or a voice-activated interface), but such discourse is quite arguably more akin to speech than to writing. Precisely how electronic discourse resembles writing and/or speech has been addressed by numerous researchers over the years. I argue that the issue remains to be resolved conclusively, but several characteristics of
synchronous discourse speak to its speech-like nature, including the informality of contributions, the spontaneity, the lack of revision possibilities, and the seeming ephemerality.

Copyright with respect to speech hinges on conceptions of public versus private space. That is, if the speech takes place at a site where a reasonable person could expect to be overheard, the remark is citable. If, on the other hand, the talking occurs within the private sphere, or in a public space where a reasonable person could expect privacy, the speech cannot be used (Armstrong & Snyder, 1995; Failinger, 1997; Gray, 1994). If we see MOO discourse as akin to speech, then, the challenge is to determine whether MOOspace is private or public. Some virtual spaces are simple to categorize one way or the other; others provide more of a challenge.

The 1997 U.S. Supreme Court decision on the Communications Decency Act (CDA) gave perhaps inadvertent, although contradictory, feedback on this question. Even though it reached an unanimous decision regarding the constitutionality of the CDA, the Court was unable to deliver a uniform opinion regarding the nature of online speech and subsequent regulation. Linda Greenhouse (1997), writing in The New York Times, read the Supreme Court decision as a referendum on the question of whether Internet discourse can be considered oral or written speech. She wrote:

Justice John Paul Stevens held that speech on the Internet is entitled to the highest level of First Amendment protection, similar to the protection that the Court gives to books and newspapers. That stands in contrast to the more limited First Amendment rights accorded to speech on broadcast and cable television, where the court tolerated a wide array of Government regulation. (p. A1)

Stevens’ decision would then indicate that MOO discourse is written communication, and thus members’ contributions to a MOO are citable under the guidelines of “fair use”—whether or not the participants expected or desired that their words would be disseminated. In terms of the composition community, then, this would mean the Netoric or Meet the Kairos Authors online meetings would have no responsibility to announce that the sessions are logged and posted. What would fall under legal permission would no doubt be seen as a violation of ethical guidelines within the professional community.

Stevens’ decision is one step towards an understanding of online discourse; the decision is, interestingly enough, seemingly contradictory to Justice O’Connor’s separate opinion, signed also by Chief Justice Rehnquist. In this alternative opinion that did not disagree with the other Justices’ ruling that the CDA was unconstitutional, O’Connor refers to those who post messages to the Internet as “Internet speakers,” thus calling into question the description of Internet discourse as more written than spoken to which Greenhouse refers. According to this reading, then, MOO discourse, as speechlike, would be subject to the guidelines for the spoken word—guidelines which revolve around conceptions of public and private space. Of course, what Greenhouse does not examine, and what is not raised by the Supreme Court decision, is the idea that discourse in cyberspace cannot be uniformly characterized.

Given what no doubt seems fairly messy at this point—that the fixity of a medium does not ultimately answer too many questions, that the collaborative nature of MOOspace makes a conception of authorship difficult to determine, and that the nature of communication in a MOO is sufficiently intermediary between legal definitions of speech and writing to leave conventions of citation blurry—it is perhaps time to abandon law as our determining narrative.
Even if law were able to holistically categorize online discourse, the dynamics of cyberspace dictate that law is not the only method of regulation. The preconceptions of participants as well as the architecture of the technology combine to form formidable structures that constrain and contain the evolution of the medium. For example, law professor Lawrence Lessig (1997a, 1997b) claimed that regulation in cyberspace is affected by more than just law. He wrote: “Laws affect the pace of technological change, but the strictures of software can do even more to curtail freedom. In the long run, the shackles built by programmers may well constrain us most” (1997b, p. 96). Lessig’s concerns were echoed by Wallace and Mangan (1996) when they claimed that “the vast, remaining mass of speech—ostensibly free and protected—is in reality controlled by the preconceptions and commercial judgments of the people who stand as gatekeepers to the means of communication” (p. iv). Although Wallace and Mangan believed the Internet is “a forum without gatekeepers,” their general sense that predisposition and cultural codes constrain speech is accurate. These regulatory forces include the influence of software developers, as Lessig points out, and also the attitudes of those who use the media at their disposal. The regulation by community members is at odds with the efforts of the law to systematize society, but it can also help keep law from becoming the only factor informing policy decisions. Regardless, the law’s ultimate failure to make sense of cyberspace interactions is tied to inflexibility and insistence, particularly in matters of accountability, that selves are coherent and singular (Mnookin, 1996).

If there is one common theme in cyberspace scholarship, particularly that which is grounded in synchronous CMC, it is that notions of a boundaried and consistent self dissolve. Bromberg (1996), McRae (1996), Nakamura (1996), Poster (1995, 1996), Stone (1995), Reid (1997), and Turkle (1995) are just a few researchers who have noted the dissolution of the self in cyberspace. Although they are variously celebratory of this particular state of affairs, their readings of synchronous cyberspace emphasize the effect of the medium on the self. It is a version of the self incompatible with the assumptions and definitions of U.S. law. The act of sustaining MOOspace is necessarily a collaborative one. Although @digging is a moment of single authorship, to exist in the environment is to interact with others’ words, whether they are words of synchronous conversation or asynchronous creation and description. Perhaps the best definition of a failed MOO is one where a lushly described landscape is empty of participants.

@dig is a MOO command. When a participant in a MOO wants to build onto the world, she uses @dig to create a new space—a room, a forest, a starship. The places where people interact and among which they move online are created using @dig. The syntax of the command is “@dig <name of place>,” and thus, @digging is an act of authoring, or writing, in the world. A user @digs a room, and then uses another command, @describe, to write a description of the new space. Some spaces are public, others are private. But, although only one user can create and describe each space (most commonly), anyone wandering through that space will be able to read and thus interact with the words. @digging is single-authoring, but reading others’ words, responding to them by creating objects for those spaces, building complementary spaces, or simply conversing about and interacting within the space, is at the root of the collaborative asynchronous activity of an online world. What differentiates MOOs from solitary programming is others’ interactions with and experiences of one’s creations/writings. Participants build rooms and objects for multiple users to discover: It is, after all, a multiuser dimension.
It might be argued that the hesitations expressed by members of the MediaMOO *Research list emanate from an awareness of the collaborative nature of MOOs. That is, the sense that *Research is not so much a series of posts as a collaborative intellectual whole would no doubt result in anxiety about citing individual contributions. More than doubts about fixity, or even whether their contributions are acts of speech or writing, MediaMOOers illustrate an awareness that their words are intertwined with others’ and that the meaning in the exchange lies in the interaction of the words together.

The MediaMOO dilemma was not a fabricated anxiety of citation. When I contacted my colleagues to ask permission to cite their posts, ensuing conversations dwelled on the different nature of a MOO list post and the sense that somehow what was said there was different from comments to a professional journal. The majority of those cited did not presume their words were available for fair use citation; rather, they requested copies of the posts I intended to reproduce and, in some instances, a draft of the article to supplement the abstract I initially sent them. M. Ethan Katsh (1995), in Law in a Digital World, asserted that

if the electronic environment is considered in cultural or spatial terms, one finds that the creative process in general changes because many elements in the environment become closer to each other than they were previously. Those working alone can now see others, feel closer to others, and work with others who in the print era were separated in a variety of ways. We cannot assume that we are working as independently as we were before. (p. 218)

Indeed, my central claim here is that the collaborative nature of MOOspace necessitates a rethinking of intellectual property at its base precisely because of these new ways of working (together). Katsh (1996) argued that “the net effect of a set of impressive new capabilities, therefore, is not simply a set of new rules or a readjustment of old rules but a set of new attitudes and expectations that will provide the frame around a new model of working with information” (p. 218). Similarly, rather than taking copyright law and applying it, as Cavazos and Morin (1994) did, to different elements of cyberspace, we would be better served to examine the nature of cyberspace discourse in all its variations and attempt to think through the influences on how individuals participate in such discourse environments.

Human computer interaction (HCI) has a unique set of principles and effects governing its evolution and structure. We might characterize MOO discourse as human-computer-human-interaction, or HCHI, and consequently investigate the ways it differs from HCI. HCHI is, I would argue, essentially collaborative in nature, and it demands the new attitudes and expectations Katsh (1995) invoked. The question of citing the MediaMOO *Research list is but one example of how HCHI affects the work of cyberspace. Similarly, it bears on how we conceptualize the future of online discourse. I suspect that MOOers’ differences of opinion can be traced, in some respect, to issues of power grounded in a situated and political self. That is, gender, class, and race most likely affect how one reacts to the idea of contributions to cyberspace finding a public home elsewhere. To that end, then, it is likely worthwhile to consider how feminist theory might lead us to think in terms of situated selves rather than legislated selves.

In particular, feminist theory provides a useful critique of public versus private space, a critique conducted, interestingly enough, by several authors in that special issue of The Information Society and on the *Research list at MediaMOO. Whether MOOspace can be considered public or private is unanswered and, in fact, any answer is likely to remain
variable. Just as discourse in a MOO contains characteristics of both written and spoken language, similarly the MOOSpace can be constructed as a melding of two categories. Defining MOOSpace is further complicated by the fact that it is impossible to characterize MOO users as a monolithic group or to construct an all-encompassing definition of MOO. The point is, MOOs exist for different purposes, and people MOO for different reasons. And, in the same MOO, multiple uses are being made of the environment. Indeed, the ambiguous discursive architecture of MOOSpace inevitably leads to a blurring of purpose for the space and conflict of interests and expectations because of those unclear purposes.

Feminist political theorist Seyla Benhabib (1992) emphasized the stakes of rethinking public and private boundaries. Reinscribing such boundaries, she argued, leads to gender blindness in contemporary political theory. Similarly, maintaining such boundaries means that power relations in private realms are effaced (Benhabib, 1992, p. 109). Her claim sets the stage for a larger feminist critique that resists a geography-is-destiny perspective and that brings the private into the public and vice versa. From Mitchell (1966/1990) to Rubin (1976), feminists have long sought to dissolve obscuring borders between public and private realms. Although Benhabib spoke from a modernist perspective, her “reconstruction” of modernism asserts a perspective that is “interactive, not legislative, cognizant of gender difference not gender blind, contextually sensitive and not situation indifferent” (p. 3). Her desire to “soften the boundaries” provides a crucial qualification to her modernism, as does her engagement with (rather than unrelenting resistance to) postmodernism and feminism. Most applicable here is Benhabib’s treatment of public and private spheres and her assertion that a “critical model of public space” remains a necessary component of a feminist political project (p. 113). Rather than reinscribing boundaries, Benhabib seeks to redefine them; her argument can be read as the desire to dissolve categories that constrain and prescribe identity and action.

Challenging discrete categorizations informs projects like that of Kimberle Crenshaw (1991) who showed how maintaining partitions like race and gender ultimately does a disservice to those who occupy two marginalized categories simultaneously. And, M. Christine Boyer (1996) used architectural principles to show how blending across boundaries allows for a more nuanced experience of the world. These various advocates use feminism-informed border transgressions to conduct a critique of absolute positioning. The missing voice is, of course, Donna Haraway (1991), who, in a call for situated knowledges and acknowledging partial perspective, provided a vocabulary both for understanding MOO collaboration and suggesting how policy might be written to accommodate the peculiarities of synchronous online discourse.

Haraway’s (1991) assertion that “only partial perspective promises objective vision” argued that input from a variety of biases creates the self and an understanding of the world. Such a critique is also a repudiation of an autonomous self that is viable from a fixed standpoint. In other words, partial perspective necessitates fragmented vision, ultimately, bound up with the idea of community. Boundary dissolution and a revision of the authorial singular self as defining entity are tied to situating the self within a social sphere that defies boundaries of public and private or self and other.

Although Benhabib’s apparent modernism and Haraway’s postmodernism seem a counterintuitive pairing, in effect their claims correspond at the point of political efficacy, a corollary to formulating policy. Haraway’s call for a partial vision grounded in the embodied self and enabled in political action is in many ways an argument for socially
embedded selves. The collaborative conversations of MOOspace are where partial and yet located selves negotiate with others to generate a landscape and make meaning of that world. The embodied self, embedded in a web of relations and virtual communication, is inextricable from the discursive landscape of the MOO. Deciding how selves come to own components of that world, how they claim their property, and how we locate knowledge generated as shared language is unknown. What is clear, however, is that a “web of connections called... shared conversations” (Haraway, 1991, p. 191) does not allow for traditional understandings of self, other, and community, and that the collaborative aspect of MOOspace inevitably complicates a desire to construct concepts of ownership and intellectual property. Benhabib’s reconstruction of modernism clearly resonates with Haraway’s (1991) work as she argued that

the human infant becomes a ‘self,’ a being capable of speech and action, only by learning to interact in a human community. The self becomes an individual in that it becomes a ‘social’ being capable of language, interaction, and cognition. The identity of the self is constituted by a narrative unity, which integrates what ‘I’ can do, have done and will accomplish with what you expect of ‘me,’ interpret my acts and intentions to mean wish for me in the future, etc. (p. 5)

The social self is situated in the knowledge-making of the community, and it is with varying and partial perspectives that the self comes to narrate and know the world.

The repudiation of an autonomous self within these scholars’ work can be related to a reading of cyberspace that refuses to see individual contributors as autonomous narrators of the space. Deeply embedded in the discursive webs of the MOO, participants in synchronous discourse create the world they navigate. The dynamics of MOOspace are a visible instantiation of the theoretical claims Haraway and Benhabib made regarding selves and spaces. Because these theorists have clearly delineated the stakes of their projects, we can understand the political importance of acknowledging these different ways of being in the (virtual) world. Subsequently, I argue that we must take this as a call to attend to the dynamics of cyberspace in tangible and policy-related ways. Assuming that intellectual property in cyberspace can be understood once the technical aspects of determining fixity are resolved completely, or the definition of MOO discourse falls to one side or the other of the speech-writing continuum, ignores the valuable input from actual users of synchronous communication venues. Marvin made a crucial point when she said the reactions of the MOO members are important; policies about copyright, “fair use” guidelines, and intellectual property in cyberspace must acknowledge the range of electronic discourse and, concurrently, address the experiences of those who communicate via electronic media. When so many users of virtual communities (and *Research discussions on LambdaMOO reflect the issues from the MediaMOO thread) object to conventional understandings of language use and dissemination applied to virtual space, they are expressing something significant about language. In our theorizing and in our policymaking, we need to be willing to acknowledge the very real ways virtual space dissolves the boundaries of authorial self and other and reflect these new perspectives in the definitions we generate.

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