The Magician's Horse:
Designing Code and Other Laws Beyond Cyberspace*

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There is a set of transactions arising in cyberspace and the code world that is merely transposed from ordinary space and which can be resolved by ordinary principles of ordinary law. For them there is no more need of any special "law of cyberspace" than there is a need for any "law of the horse." But cyberspace is merely one part of a coded world beyond and bigger than cyberspace. There are some extraordinary things happening in the code world compared to ordinary space. In an objective code world, characterized as an embodied switched network for moving information traffic or for changing the state of a machine or another coded construct, coded utterances become operative. I can code a horse and I can not only reify it but I can create a class of horses sharing properties, methods, and functions. I can embody "state" in an object-member of that class and I can use computation to change the state. In at least some places in the code world, there is something happening that is without any non-fantastic likeness or analogy anywhere in the world of ordinary space. There in the code world I am not simply crying "fire" in a crowded theater, instead I am causing the theater to burst into blames by executing a "fire" command—what else am I doing when I seize control of your computer and start deleting or corrupting files? Moreover, we are not simply imagining that we might, with Ali Baba against the 40 thieves, say "open sesame" and a door might open, but rather if your password is "friend" I can actually "speak" that word and enter as a thief into your most private domains in the code world. Remembering Professor Lessig's well-known parable, Martha's poisonous flowers can kill the neighbor's dog when the wind blows them from Martha's property to Dank's. But these are coded flowers in a virtual world operating under its own coded architecture, and Martha may at essentially no loss to herself simply recode the flowers so they lose their poison when they leave her property without her permission, saving Dank the trouble of making yet another new dog. These are not "normal" flowers and these are not "normal" dogs, nor is this the ordinary law of nuisance nor is this the ordinary economics of scarcity and transaction costs. We ought no longer to be thinking exclusively in terms of the metaphor of ordinary horses transposed into cyberspace. The "words" of code and of property-shifting coded-constructs, including coded horses in the code world, are exactly what we would call magic words and magical horses if any such thing actually existed in ordinary space. And because these coded horses, magical as they may seem, are themselves (at least so far, directly or indirectly) coded, and may be decoded or recoded, by someone else, they are precisely what we could call "the magician's horse." These constructs, unique to the code world, create the sort

of objective problems with real consequences and real relationships that ordinary law is systemically unsuited to handle in the code world. It is for this set of cases that there is a need to consider some sort of new law fitting for the new technology; a law for the magician's horse, reasonably specified to constrain predatory or piratical actors without destroying the power of code for the common good. It is for this reason that I am proposing a unified theory of design deliberately to specify law for the code world.

This Article is the last of a series of Articles that have defined, analyzed, and made specific normative recommendations for transforming existing principles of ordinary law to handle the unique problems of the code world in particular situations. In this Article, I generalize up from the prior specific cases. Here I propose: (1) to define the code world and some of its major domains, (2) to specify certain design features of each, and (3) to lay out the foundations of a specified common good and a common approach, "the nature and place of use," as a rule of thumb for designing a law congruent with norms, markets, architecture (and code) fitting for the new technological uses and new machines in a coded world. It is time deliberately to design a law for the magician's horse.