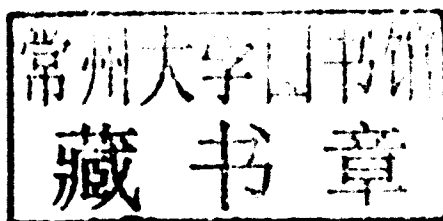*To my wife Fadime, daughters Melike-Grace and Medine-Rose
and in memory of my mother Muriel.*

The Law of
Virtual Worlds
and Internet
Social Networks

ANDREW SPARROW

GOWER

About the Author

Andrew Sparrow is a national award winning Solicitor and founder of Lecote Solicitors, a niche commercial law firm concentrating on New Media, Internet and IT Law.

He was one of the first Solicitors in the United Kingdom to recognise and pursue the legal issues relating to online business. Andrew is author of seven books on Commercial Internet Law, published internationally.

In a national poll conducted in 2004 and supported by the then Department of Trade and Industry, he was acknowledged as one of 100 individuals in the United Kingdom who had contributed most to the development of the Internet in the previous decade. Andrew speaks on legal issues relating to the commercial Internet, around the world.

He can be contacted at:

Lecote Solicitors
In association with Rochman Landau
Accurist House
44 Baker Street
London
W1U 7AL
Tel: 020 7544 2424
Email: andrewsparrow@lecote.com
www.lecote.com

Praise for Andrew Sparrow's Previous Books

Music Distribution and the Internet

It is a book no one in the field would want to miss ...

<div align="right">

Emerald Journal – Library Review

</div>

The great advantage of the book is that it deals with the issues in a comprehensive and logical manner. This book is a vital part of a commercial lawyer's armoury when acting for clients who operate websites for the sale of products and services.

<div align="right">

Law Institute Victoria

</div>

How well, and from that how effective are legal decisions and interpretations in the field, is something Sparrow touches upon and something that readers will readily identify with ... Sparrow has added an attractive topical work to the current literature. It is a book no one in the field would want to miss.

<div align="right">

Stuart Hannabus, Aberdeen Business School, writing for *Library Management Journal*

</div>

In his new book, Sparrow attempts to offer insights into the legal aspects of conducting music-related business online ... few other books about online music offer any analysis of matters such as advertising, regulations, electronic payment systems or international conflicts of laws.

<div align="right">

Jeremy de Beer, Law Professor at the University of Ottawa

</div>

Film and Television Distribution and the Internet

The minefield of rights clearances, new rights definitions and global distribution possibilities comes with a price. And that price is knowledge ... this book is both an examination of the legal issues and a handbook in actually launching a film or TV programme into the new digital world. It could not be more timely.

<div align="right">

Peter Buckingham, Head of Distribution and Exhibition, UK Film Council

</div>

This book is a handy introductory guide to some of the major legal and technical issues involved in marketing and distributing audiovisual content via the internet ... In short, this is a useful book for those seeking some initial guidance to the headline issues and represents good value for money.

Graeme Fearon, *Entertainment Law Review*

Contents

1 *Introduction: The Advent of the Avatar*

If you believed that there are no laws which govern Internet social networks and virtual worlds this book should persuade you otherwise. There is law, and a good deal of it. Why would there not be? If one considers the degree of sophistication these environments comprise, the sheer wealth of content that resides within them, and the fact that they are, in the last analysis, human interactions with all the flaws that may bring, it becomes clear that they cannot exist on a parallel plane, immune from the rigours of legal governance.

It is hoped that, at the very least, the issues featured in this book will prompt the reader to think about how the law should properly control people's use of the environments.

It is the premise of this book that virtual worlds and social networks have a long term future. It is written in the belief that we are only at the beginning of the story of the Internet and what it will accomplish in terms of shaping our lives.

The book is not intended as an academic review of how virtual worlds might be regarded in society. It is rather an attempt to distil what is known or which might reasonably be supposed to be the laws which must impact on in-world activity and serve as a form of handbook to guide the reader through these fascinating communities.

We cannot yet fully assess the impact Internet social networks and virtual worlds will have both on society and the manner in which individuals share information and communicate. At first view, virtual worlds may appear to be little more than highly sophisticated computer games. Whilst they undoubtedly permit a form of interaction between individuals hitherto not possible, that characteristic alone would not afford them much significance. They are self-contained environments which turn on its head traditional legal thinking.

That the law must, and indeed does, govern in-world actions is also not in question in the book. While the Internet's reach is long the law's grasp is more than equal. However, what is reviewed is how the law applies to virtual worlds. How do we direct the laws of privacy, Intellectual Property, Contract and Consumer regulation to in-world conduct? What is it in the various elements of in-world architecture which permit us to say they fall within the ambit of particular legal treatment.

If one chooses to participate in any of the virtual landscapes there are thus legal and regulatory challenges to address. The law does not prevent participation in virtual worlds but it does drag physical world concerns into the fantasy realm.

It is clear that the Internet's evolution at each phase of development is always far in advance of the market of potential adopters. This pattern has been the career of the commercial Internet from the outset. In 2000, those who recognised the medium's perfect application to retail business were correct in their analysis but sadly too far

ahead of the actual consumer market to yield proper commercial return. Most failed but had they been introduced three to four years later they would undoubtedly have succeeded.

Next, the development of the medium for distributing media content. First music. Then film and television. The Internet is developing broadcast property away from television screens but once again, the ability to render digital music and movies online existed long before the disruptive transition was appreciated by rights holders and the media industry. However, once established, music and film downloads changed the consumption of media content for all time.

Most recently has come Web 2.0, the next generation of the Internet which provides enhanced levels of interaction for the user. Social networking websites are one manifestation and have taken even the most passionate of Internet evangelists by surprise by the sheer scale and speed of their adoption. They are now a permanent feature of the wired world.

Bebo, *MySpace* and *Facebook* collectively have more than 301 million users globally.

Instead of users simply consuming media content they can for the first time create their own online environment. The Internet is no longer merely a collection of website destinations. It is participative. It is a fully interactive medium which engages with a plethora of apparatus such as the Apple iPhone and Blackberry. It is this capacity on the part of users of the Internet to participate and the corresponding ability to create user generated content which is making social networks and now virtual worlds so interesting.

Virtual worlds are then the latest manifestation of the Internet's inexorable appetite for development.

Virtual worlds call for the creation of a fantasy environment or virtual self. They are the natural extension of the popularity of social networks, a three dimensional (3D) manifestation of a social life. Whether they will be regarded as the ultimate in escapism and merely futile societies, or hugely beneficial tools for corporate development and innovation has yet to be determined.

These environments are, however, poised to make the leap from the plaything of Internet enthusiasts to the conservative and exceedingly grounded life of business managers.

The concept of such online environments is hard to grasp and certainly difficult to comprehend in terms of a meaningful tool for social and business dialogue. This difficulty is, in part, explained by the initial application of virtual worlds as predominantly a form of sophisticated online games. However so called Massive Multiplayer Online Role Playing Games have forged virtual worlds in which real world businesses are rapidly building digital presences. The 3D web has arrived with major brands such as Adidas, MTV and Sky News having virtual world presence. It is a chaotic environment harnessing business opportunities and brand engagement and blurring the distinction between social networking and role play. Hilary Clinton launched her 2008 presidential campaign through a virtual world. David Milliband, as Foreign Secretary became the first senior politician in the UK to create his own avatar. Virtual worlds are not just a remarkable means of communication, they are also a territory. Sweden has opened an Embassy in – one such environment.

Understanding virtual worlds requires an understanding of the user's relationship to their technology. For many people, the virtual world they inhabit is connected to their identity in the same way as the clothes they wear or the cars they drive.

The most famous of all virtual worlds is the Second Life platform. Second Life proclaims itself as 'vast digital content'. It is a privately owned San Francisco based company called Linden Labs. It was founded by Philip Rosedale, the former Chief Technology Officer of RealNetworks. Second Life was launched to the public in 2003 and in 2009 has 17 million registered users. It is free to casual users but a small monthly payment is required for land ownership. Created by Linden Lab, Second Life is more like real world and there is no game which is the key driver. It is purely about living and socialising in an alternative reality. Communication between avatars is via instant messaging, proximity-based chat and also voice. The world has a virtual currency called Linden dollars which can be purchased with real currency or earned through undertaking a virtual job or manufacturing items to sell in the virtual world. One can practice almost any occupation in-world and then the earned Linden dollars may be exchanged for real money on Second Life's currency exchange, the LindeX, at fluctuating exchange rates.

Virtual forums draw on the basic human desire to belong and express oneself. They connect people and enable a dialogue between companies and their customers.

The interesting feature about virtual worlds is that they are not restricted to being merely sophisticated social networks. Companies such as Cisco Systems and IBM are using them to engage with employees as well as existing and potential customers. Cisco Systems owns several islands in Second Life and offers public classes. Virtual worlds are not merely fantasy lands, they are areas where people can have a different kind of interaction. Cisco believes the medium offers exciting new ways to educate both employees and customers about their services by delivering information in a more interactive format.

Advertising agencies have won pitches within the virtual world and even run advertising campaigns for cars in-world ahead of their first appearance on television.

Virtual worlds offer us the opportunity to see the world not as it is but as we would like it to be. They have a significance far beyond the transient conversations they facilitate.

The law as it relates to virtual worlds is complex. Whilst there has been a great deal of new law introduced since e-commerce became a meaningful it cannot govern all issues which may present themselves in the in-world sphere. So, where no specific law applies to virtual worlds this book seeks to apply accepted legal principles to various aspects of the virtual world experience.

This approach to an understanding of how the environments will be treated under the law will prevail for some time. Such is the process of legal development that legislation must be interpreted by the courts to establish how it impacts on specific facts. This is the preserve of case law. Given the short time since the introduction of virtual worlds and indeed Internet social networks in general there is very little case law precedent.

However, there is no doubt that virtual worlds will find themselves grounded firmly in the precincts of the courts. It is only a matter of time. The law will therefore develop in the coming years.

So this book is written for anyone interested in virtual worlds and social networks whether commercially because they want to explore the possibilities such environments present, or simply for academic curiosity. Similarly, it is for anyone who wishes to participate in virtual worlds and who simply wish to venture into a new domain unlike anything the real world offers.

It is hoped that this book explains the law in as straightforward a manner as a review of such abstract environments permits. It is applied throughout in an in-world context. In this way it is hoped the reader will gain a good understanding of the legal issues which govern the expanding and fascinating environments that are virtual worlds.

Andrew Sparrow
June 2009

2 Entering into the Virtual World and v-commerce Contract Formation

2.1 The Geneology of Virtual Worlds and Social Networks

In this chapter we will examine the issue of how legally binding contracts are made within virtual environments and Internet social networks. The generic term for business conducted within virtual worlds is virtual commerce or v-commerce. We will use these terms throughout the book.

To understand virtual worlds requires an appreciation of their geneology, an examination of how they operate and what features they possess.

The Internet has evolved as a universal interconnected network of audio, video and electronic text communications that blur the distinction between interpersonal and mass communication, and between public and private communication. It allows forms of communication, that were previously separate, to overlap and interconnect. The latest indications are that whilst people are spending more time online they are visiting fewer websites. People often access the same websites so many Internet websites are seldom visited and remain unknown.

Virtual worlds are the perfect manifestation of this evolution. They become destination environments for Internet users and hence fit the trend of more focussed Internet access and, above all, they are participative.

Social network websites enable their inhabitants to connect to friends and colleagues, send emails and instant messages, blog and post personal information profiles. These profiles can include photographs, videos, images and audio. Some social networks are dedicated to particular topics or groups.

Virtual world content is created in an online game like 3D digital environment. Typically they provide inhabitants with a scripting language and development environment which enables them to build new objects.

Social networks are varied but typically share certain characteristics.[1] Many social networks allow users to create a profile of themselves and 'friend' (connect with) other users. Examples include *Facebook* and *MySpace*. Users grant access to their profile to other people through 'friending'. These profiles allow people to share photographs, comments and news of events. Users can also create groups to signal through association their values or ideals. Other networks focus on specific forms of expression. For example, *Twitter* is a social network tool based around 'microblogging', and features small dispatches that are

---

1   Demos Report: *Network Citizens – Power and Responsibility at Work.*

akin to short 'status' updates – where someone is, something they have seen or a brief thought. Websites like *Flickr* focus on photos, videos or music. These have been augmented by platforms that facilitate the exchange of ideas and that help collaborative working. One of the most important features of social network technologies is that they allow inhabitants to create, map, visualise and define ideas, connections and relationships.

How are virtual worlds defined? There are doubtless many descriptions and indeed those will vary according to the precise characteristic of the particular world.

Individuals are represented within the world typically as 'avatars'. This is the inhabitant's virtual representation of himself in a computer game.

Philip Rosedale, the creator of Second Life has said virtual worlds are what we always expected the Internet to be. Cyberspace was always supposed to be full of other people, but when you are on a website, in fact there is nobody else there. A virtual world is a changeable 3D world that everybody collectively owns and which you can alter. That is what makes virtual worlds so different and what makes the experience of being there so different. Virtual worlds contextualise social encounters in a way that social networking cannot do. Without places it is hard to have activities. Rosedale says that the bowling alley or alcohol does not matter as much as the people but if you do not have the bowling alley or the alcohol it is just an empty room and no-one comes. Virtual worlds are social networks with a purpose. Games have always been a platform for engagement between people.

It is estimated that the combined value of the major virtual world economies now exceeds the Gross Domestic Product of many nation states. That value is built around the creation, acquisition and trading of virtual property and possessions. Each can be bought and sold in-world and may even be auctioned online. There is an increasing array of virtual worlds. In addition, the manner in which one participates is becoming more diverse. Most worlds are active worlds wherein participants interact with a variety of avatars both individual and corporate. However, more recently a series of private worlds have developed. These environments can be branded to an organisation's particular brand. They are in essence 'white labelled' worlds with customised orientation areas. The attraction of such environments includes the ability of a company to wholly control the fixtures and participants in-world. They can, for example, exclude competitor companies from the environment. They can configure the world so that the entire experience is the brand. By contrast, active worlds have an element of chaos because of the lack of direct influence.

Virtual worlds offer the user a much richer experience than a website. There is, of course, the ability to see each others avatars and then communicate by text. In addition, virtual worlds allow the operator to see who is looking at what part of the virtual environment – rather like being able to see which web pages are being viewed.

There are many potential business applications for virtual worlds. It is useful to briefly consider some of these before we turn to a review of how contracts can be formed in-world. For example, one can own land in-world. Indeed most virtual worlds operate on the basis of land ownership within the environment. This allows inhabitants to build, display, and store their virtual creations, as well as host events and businesses. Users can purchase land and develop their own piece of the virtual world. Typically, this is by payment of a monthly fee plus a land use fee proportional to the amount of land the user owns.

Collaborative design also lends itself perfectly to the virtual environment. Customers and partners in disparate locations can co-create a real life product or service in real time. The environment software usually provides flexible building tools to allow manipulation of geometric primitives in a simple interface. These can be stretched into new shapes, their textures and physical qualities altered. One can create objects of all kinds and sizes. It is possible to import into the environment jpegs and other standard graphic files to texture the objects one creates. Technology also enables the objects to respond to gravity, inertia, propulsion, and wind from in-world weather systems. Objects cast shadows and can appear to be illuminated by the sun.

Simulation of real life environments can be done at low cost, enabling anonymous feedback. Companies have used the virtual environment to demonstrate how it can be used to design the real world customer experience of a real world building. This included the layout of the building, systems and user interaction with corporate personnel using role play. A synthetic modelling environment can be built to test real world physical environments before building them. At the touch of a button a variety of designs can be accessed. Such collaborative design can address health and safety issues. Uses have included the design of petrol stations. The forecourt can be made transparent by the click of the mouse revealing the intricacies of pipes, pumps and tanks that the driver needs to be aware of when reversing the petrol tanker into the petrol station. Airport terminal building prototypes can be used to simulate the customer check-in procedure, role playing emergency procedures when a suspect package is found.

Marketing opportunities exist. In Chapter 6 we will consider marketing as it applies to virtual worlds in detail. Businesses can run marketing campaigns to test a real world campaign. Virtual focus groups can be set up. Product placement can be undertaken in-world as can brand positioning.

Virtual conferring and meetings are yet another feature of virtual worlds. Using the multiple communication streams of audio and video media gives inhabitants a rich experience and an environment in which to be innovative.

Learning and training within the corporate organisation can be delivered by peer to peer group communication of complex information using the 3D spatial element within virtual worlds. It is possible to train customers and employees in an immersive environment using realistic role playing scenarios to practice business processes. It is interesting to note the opinion of Sir Tim Berners-Lee, recognised as the creator of the first website and the World Wide Web who said;[2] 'What's exciting is that people are building new social systems, new systems of review, new systems of governance. My hope is that those will produce ... new ways of working together effectively and fairly which we can use globally to manage ourselves as a planet.'

Berners-Lee sees virtual worlds as credible tools and the continuance of this process of development which underpins the Internet.

It is clear whether the virtual world is active or customised for a company, there is still the ability to form legally binding contracts in-world.

The manner in which contractual relations can be forged is itself fascinating. It is possible to sell virtual world's assets purely in-world or into the real world. For example, Domino's Pizzas who are represented in Second Life, may take your pizza order in-world and deliver the actual pizza in the real world. These contracts may be between the virtual

---

2   Sir Tim Berners-Lee talking to BBC Online in March 2008.

world operator and its users, or between users themselves – avatar to avatar. Finally contracts may be formed between users and the outside world.

It is also possible to sell virtual world assets, for example on eBay – itself a phenomenon of modern society. One can also buy Linden Dollars on eBay. In fact, the whole process of contractual formation in the digital environment is at once easy to accomplish, and easy to bring about significant and sometimes unintended consequences.

One often thinks of contracts as weighty legal agreements signed in the physical world by the instrument of the pen. Of course the concept of contractual relations has evolved with every technological innovation from the telephone to the fax machine. Binding legal relations can be created by exchange of email, SMS text message and over the Internet by interacting with an e-commerce website.

Clearly there are many in-world interactions which do not constitute meaningful legal relations. They are not intended by the principals who direct their avatars to be anything more than a forum for fascinating exchange between individuals whose interests coincide on a virtual island. Even where the environment is populated by well-known retailers often this presence is simply to promote the brand in an otherwise baron setting.

However, well-known brands such as Dell Computers also have representation in virtual worlds. Their presence is fascinating because they are depicted as physical shops with all the associated corporate branding and product display. One's avatar moves about within the environment freely. The environment lends itself to a form of community with other avatars. One can talk to other users through their avatars about the products. Dell, for their part, can see who is looking at which of their products and in what part of the virtual shop.

Payment for products can be made in-world using Linden Dollars, for example, in the case of Second Life, or in that forum, 'round world' via a transactional website from a Second Life hyperlink generally in US Dollars. Linden Dollars are exchangeable for US Dollars.

As business, in particular, comes to adopt these most unique networks then the potential for enforceable contractual relations becomes manifest.

However, it is also clear that the very nature of virtual worlds presents a raft of new legal problems. At what point would a contract come into existence? To understand how a participant, whether business or virtual consumer, can operate safely in such worlds, it is necessary to consider how English law approaches the matter of contract formation generally. This is because these long established legal principles will doubtless apply to v-commerce and shape the way which virtual environments must be configured.

In this section we will examine these contract law considerations and see how a contract can be made in-world.

The assertion by Bill Gates in his book *The Road Ahead* that the Internet 'will carry us into a new world of low friction, low overhead capitalism, in which market information will be plentiful and transaction costs low' has proved correct. However, it is likely that not even Gates had in mind the advent of the avatar.

Virtual worlds represent a triumph of technology over the bonds which hitherto prevented instantaneous communication on a truly global scale.

Since these worlds fit within an established legal framework, so it is necessary to understand the process of contract formation.

Such an appreciation is vital to in-world business as the sheer openness of the environments can cause problems.