# THE 20 QUESTIONS GAME
# THE JOURNEY TO PERSONHOOD

*by*

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*By the term "personality" is defined in law the most coherent quality of empowered and protected subjectivity. As post-modernity features the division of the individual self, utilising in addition the intervention of technological themes to explore variants of activity and expression, contemporary legal science is challenged, on frequent occasions, with assessing the parameters of subsequently emerging trends and clearing the reshaped landscape by defining in its language the characteristics of advancing practices. With all these in mind, and overwhelmed by concepts of scattered identity as appearing within the ICTs context, we are facing a new problem of potential fallacy: could permanent manifestations of the person be accepted as extensions of the legally protected personality? Are e-mail accounts, online game characters and others similar projections of the individual on the information streamline, parts of the natural self that law enshrines or, simply, an enthusiastically overrated deception? Taking into account instances of legal persons contesting human rights in court and proprietary items being addressed -for functional purposes- by national legislations as persons, we may imagine the importance of granting personality rights or, at least, conceding to a limited ground of thereupon set line of defence. Opposite to the growing overpopulation of laws, which results in sluggish administration of justice, we need to reach to conclusions while carefully dealing with the conflict between legal and societal realism: the first calls for symmetry and prudence; the second demands for seeking out to preserve the most threatened value in our age of advancing commercialism and thin identity: the human individual.*

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## Introduction [1]

### The Person and a "Bunch of Identities" [1.1]

There are different perspectives from which one could measure the impacts of new technologies on contemporary legal and social systems.

The person - not in any of its conceptual formulae but rather as the actual living individual, who receives stimuli and information from his/her surroundings and reacts accordingly with the intention to change the shape of both things and circumstances – is a fragmented entity, divided into the multiplicity of roles and tasks that daily life compels to undertake and perform. "Worker", "parent", "lover", "consumer", "citizen", are few only of the acknowledged divisions of the (post)modern self, each referring to more than one interpretation scope in sociology, anthropology, law, biology, psychology etc. The introduction of the Internet infused understandings over self and identity with further new dynamics.

Human interaction took steps into an unfamiliar domain, which the term "cyberspace", despite being considered now a bit outdated, reflected best with an apt symbolism over the Internet's virtual (physical) infinity and unlimited potential for interpersonal contact. Communications were revolutionised to that extent where new behavioural patterns emerged from the online context and, consequently, relevant social norms were bound to be reviewed. The online self is now a reality, an evolving trend in the greater map of everyday practices that determine our contemporary societal outlook.

Law, the fundamental tool in the administration of justice, does not stand outside this design of things; it mirrors society, interferes when called in and regulates where need rises to. Until now, a variety of online issues between individuals, groups and governments have been covered by both national and international legal institutions and statutory instruments, thus underlining the pervasive breadth and adaptability of the legal authority.

However, there are also grey, unresolved areas. The diverse electronic environment allowed the birth of practical freedoms and rules that submit solely to its distinctive communicative logic: a user may jump anonymously or under the guise of a nickname from one webpage to the other; may

proceed into forms of contact that in the "real world" would be considered either inappropriate or banned; and may also be restricted by the architecture of passwords, commercial infrastructures and private online establishments. Understandably, the amount of hosted activity does not fully comply with the interpretations of the world which laws carry; yet, on the other hand, it marginally emulates real world processes. It is debatable whether the materialisation of human conscience in digits is entitled to similar legal protection as prescribed for the offline self.

For one thing, the otherwise "divided" user perceives existence in its unity. It is under one set of inherent human values and ideals of justice, which lie in the heart of our civilisation and its moral traditions, that she translates and criticises limits to freedoms and rights as applied to the diverse facets of her life: in family, in the workplace, on the street, in private spaces like restaurants or super markets. Although "scattered", the human being keeps a rather centralising viewpoint over the self and the ideals it holds on to and further seeks to preserve. Therefore, it is not difficult to comprehend arguments or complaints that are brought forward in respect of online communications processes. Within the digitised jungle, where in a social-Darwinist manner "the fittest survives" and the mightiest rules, personal dignity is the first to be attacked without means to defend itself or to exact any form of conventional offline compensation.

The online self is a rather complicated concept. It may acquire different degrees of distance from the individual it represents, making appreciations over the legitimacy of its assertions even more difficult, as far as an explanatory reasoning based in law is interested and able to correlate.

Could these variants of the electronically manifested human demand for themselves real-world liberties? In reverse, could harmful interference with their hypothetical existence build an argument for calling in the application of law? For the purposes of the present discussion, which doesn't aspire to give answers rather than to set a starting point for future endeavours, three schematic modules of factual personalisation will be portrayd and explored under the light of the rights discourse.

# The "Virtual" Metaphor [2]

## Cyber-Culture and Virtual Bodies [2.1]

The cyberspace ideal - defined, in brief, by information infinities and humanity metamorphosing under concepts of digital metaphysics - acquired popularity across the pioneers of the early computer networks, back in the days when the TCP/IP protocol was being introduced to conclude with the realisation of a global "Internet". It offered a lifestyle alternative with vivid hopes for reaching that through technology to the next step into the evolution of human morality. Users pertained to deploying personality traits within the communications module and to imagining bodies of transferred data hosting their, now expanded, intellects across the "living" network. The reason behind that was possibly the onscreen "emptiness", the visual silence of unrealistic pixelised images and words that were hanging heavily over monochrome backgrounds. In substance, the Internet experience was nothing more than received information causing changes on the users' monitors; however, the mesmerising simulation of space that those frugal displays achieved, in conjunction with the unprecedented feeling that the physical self perceived when with the touch of a key his conscience would cover long distances at the speed of light, created the impression that *virtual bodies* were taking shape and visiting computer system after computer system.

The virtual body sensation changed radically with the arrival of the World Wide Web (www). The real world colonised and finally took control over the "vision", making it more approachable to the increasingly incoming masses that were seeking to simulate offline practicalities rather than complying with science fiction apparitions. Yet, the virtual body concept did not die, it simply adapted; its close connection with the mind and the emotional world of the user retained its important role in formations of active international *technosociality*.[1]

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[1]  Escobar, A. (1996), Welcome to Cyberia: notes on the anthropology of cyber-culture cited in Youngs G., Theoretical reflections on networking in practice – the case of women on the Net, in Green & Adam (2001) p. 84

## **Three Models of Interactivity** [2.2]

We may apprehend online interactivity over three basic patterns of contact. The first is what we may define as the "real-to-real" (R2R) model. Its premise is simple: communications are conducted between identified offline entities. Email exchanges between accounts with clear offline attachments (like "N.Gervassis@uniofedinburgh.co.uk") or pseudonyms (nicknames) that indicate actual offline identities through accompanying data, fall under this category. On the other hand, an R2R contact occurs whenever the Internet is directly or indirectly utilised as a conventional communications medium, as for example happens when a commentary over known persons is uploaded on a news website.

The "real-to-virtual" or "virtual-to-real" model (V2R) takes an obvious distance from the R2R, since one of the involved parties attains to anonymous/pseudonymous channels for online expression. Here we may include incidents referred to in the amount of CyberSLAPP/"John Doe" cases[2] and any communications between free online services and their clients that, however, while seeking privacy did not disclose personal data to their hosts during the relevant registration procedures.

Interaction between identities exclusively apprehended by their online existence complies with the third and final model, which is thus called "virtual-to-virtual" (V2V). As such are defined contacts made between users hiding behind nicknames in artificial online environments, the likes of chat-rooms and massive multiplayer online games (MMOGs).

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[2] "CyberSLAPP cases typically involve a person who has posted anonymous criticisms of a corporation or public figure on the Internet. The target of the criticism then files a frivolous lawsuit just so they can issue a subpoena to the Web site or Internet Service Provider (ISP) involved, discover the identity of their anonymous critic, and intimidate or silence them." "CyberSLAPP cases are so-called because they are Internet versions of a much older abuse of the legal system known as SLAPPs, or Strategic Lawsuits Against Public Participation. SLAPP cases are typically brought by powerful corporations or public figures against regular individuals who oppose them in some way by fighting a new development, for example;" from the CyberSLAPP project website, available online at www.cyberslapp.org . The Electronic Frontier Foundation have enduringly defended "John Does" (anonymous users) in court and host on their website a rich list of cases, available online at http://www.eff.org/Privacy/Anonymity/cyberslapp.php. One of the most important cases is still considered to be U.S. Dendrite International, Inc. v. John Doe No. 3, 775 A.2d 756 (N.J. App. Div. 2001).

## Dive into the Virtual: Metagenesis and the Virtual Body [2.3]

### In rerum natura [2.3.1]

Once launched into cyberspace, human conscience travels through the artificial infinity. It substitutes its physical shell with a digital trace as the only indicator of the apprehended meta-existence. Although navigated with the use of solid objects like keyboards and computer mice, it pretends to physical insubstantiality. Communication is materialised through visual representations, words and digital simulacra moving across screens to signify life, real in mentality, nebulous yet in matter – almost phantasmal.

Interactivity of minds on the Internet incarnates a laudable form of human contact, whereupon online models of societies have been instituted and are thriving. The inhabitants of these spaces are directed transmissions of data, animated personifications that pose as role-played characters, anonymous and pseudonymous entities and even personifications of static computer systems. The appointed umbrella term *online personae* includes all these projections that bring their demeanours into conflict while conferring respective offline emotional shifts.

The Virtual Body constitutes the tangible appearance of the persona which other users perceive. A combination of software preferences is activated to endow it with onscreen presence. Henceforth, putting aside experiential licences of "conscience hosts" that online participants get attached to, technically and in essence Virtual Bodies are software interfaces that serve as both-ways access points, towards and from the user.

Whereas the external human observer comprehending the parameters of contact through symbolic representations, in this section we will elaborate on the practical development of online personae and associated themes, via exploring the Virtual Body paradigm. Although illusionary, the given impression of digital substantiality facilitates comparative appreciations of the virtual world, in reflection to our knowledge of the real.

Simulation of the human being, accompanied by re-phrasing materiality with the use of computer code, entails the belief that the normative order and ethos of the real world are being transferred as well into the adopted setting. The memory of reality is instead imagined as its extension. While the effect remains true for all R2R situations and, partly, within V2R issues,

in all other developments and especially those V2V instances, it features a plasmatic construction. Rights and obligations may be accordingly claimed but it is disputable whether they meet requirements for raising actual legal discourse.

In reverse, the semantic function of the Virtual Body applies normally to R2R models when "real" actors seek evidence of their online involvement. The idea of a body made of data, performs as a marker. Therefore, while being dominated by a metaphorical linguistic outlook, the following part of the discussion should be interpreted, wherever implied, in pragmatic approximation to those circumstances where the Net need not to be depicted beyond operating as a communications conduit.

### Virtual Landscapes: Lands behind the Mirror [2.3.2]

Communications needs and the offered vast potential for exploitation in other lines of social activity formed the basis for the overwhelming plurality of hosts that operate on the Internet. These environments present tremendous diversity in goals and thereupon utilised interfaces. The only limit to creating new interactivity platforms is, without exaggerating, human imagination. While storing hardware capacities are non-stop increasing and software designing follows a parallel developmental course, more and more innovative and improved online setups come to be added on top of the existing plethora.

On these platforms users discover the tools that will enable them to flesh out their online presence, to construct their Virtual Bodies. A combination of interface capabilities and the participants' desires will determine the progress of further online involvement. Some spaces are designed to allow cross-platform communications, the likes of email services; others are relatively isolated due to performing as closed systems on grounds of both setting and software, as happening with the various MMORGs. Net-socialising is implemented from there with the formation of communities that are either defined by the purpose and constraints of the hosting setup or by the cross-platform attitude that their members pursue to express.[3] Personalities may, in search of spreading their presence across the

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[3]  For defining these two models, the terms intellectual and the functional virtual community have been previously suggested, in Gervassis (2004).

multiplicity of spaces, exceed appointed interface limits by incarnating their demeanours on different platforms; for example, a user may be operating under the nickname "Highlander" on both the *MySpace* networking website and *Yahoo! Messenger*. Interestingly, "Highlander" adopts a characteristic typing idiom, common for his two different "bodies," that establishes a degree of reputation throughout both environments. Understandably, the parameters of interactivity are multiplied with each new factor may add to its equation basis.

Through the rough description of online setups is further made clear what possibilities are reserved for a given Virtual Body to abide by one or more of the as above suggested interactivity models. A closed game system will restrict the between partakers relationships to a V2V line of contact; but, at the same time, a game character that makes insulting comments about a real person in such a popular and crowded space as the *World of Warcraft* game is prone - in the first instance[4] - to incoming V2R liability; an application allowing cross-platform communications enables the body to perform alternatively under V2R or R2R rationalities, and so on.

In addition, it should also be noted that the degree of virtuality to which a digitised landscape adheres to imposes limits to offline authorities against approaching online entities. Once the Virtual Body gets completely disconnected *in praxi* from a specific human being and any identifying data, like name, nationality, residence etc., it is considered sort of independent: in acquiring full anonymity it literally cuts off all jurisdictional links with the physical reality.[5] Of course, in this manner is simultaneously forfeited any legal form of protection that would benefit the human user.

### Ensarcosis: Adopting a Virtual Identity [2.3.3]

Partially paraphrasing a notion explored by Plant,[6] cyberspace is the womb where human conscience finds prolific space to be reborn. The concept of the Internet varies from person to person; thus, means of

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4   The identity of the user may be revealed under normal legal procedures by the game's host, leading the dispute to R2R channels.
5   Hidden/fake IP addresses stretch the effect to its limits.
6   Plant simulates cyberspace's fertility to the feminine nature, contradicting it to phallocentric approaches to its operation. (Plant, S. [1995], 'The future loom: weaving women and cybernetics', Body and Society, 1 [3/4], pp. 45-64, cited in Green & Adam (2001), pp. 318-319)

constructing online identities[7] are brought forward and used in an innovative variety. Virtual Body, and consequently the user, seeks out to become uniquely identified. The construction of an online identity passes through successive stages like form, gender and name.

Gender and name respectively imprint the body's presence and weight in the cyber-community. The selection of identities follows after existing societal stereotypes,[8] either to replicate their dominant elements or to, intentionally, deconstruct them online. Combined identification factors, such as nicknames, determine consequently the Virtual Body's behaviour and influence virtual mannerism in response to the alternative themes residing in hosting landscapes.

Accordingly changes the visual depiction of the Virtual Body. In text based environments, words become matter to describe action and emotion, thus literally speaking the body-language. Other settings (or "worlds" as they are often called) facilitate advanced software applications to build bodies combining images, sounds and words.[9] The intrinsic connection between code and natural language in conceptualising environments and actors animates cyber-communications. Most importantly, only through it users receive feedback on their virtual whereabouts.[10]

### Psyche: Animating the Digital Soul and Infinite Life [2.3.4]

Assuming the Virtual Body identifying the human mind, *what* and *where* is the digital avatar's *soul*? While the intellect navigates activity, in reality it is the soul which is projected online. For example, an online persona being used by a number of users that access the Net at the same time subsequently presents to the external observer a multi-layered and complex "emotional" ethos. From the exactly opposite perspective, multiple *alter egos* of one user diverge in terms of setting, and possibly behaviour, yet their emotional sensitivity reaches down to the one shared soul. Furthermore, a different point on soul is raised when the Virtual Body "dies", when it ceases to exist because either the

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[7]  Turkle (1995)

[8]  Michaelson, G. & Pohl, M., Gender in email-based co-operative problem-solving in Green & Adam (2001) p. 42

[9]  Such typical examples are set by MMORPGs like Everquest, City of Heroes and Lineage, and the virtual world of Second Life.

[10]  White, M., Visual pleasure in textual places: Gazing in multi-user object-oriented worlds in Green & Adam (2001) p. 127

digital environment is set permanently out of order or the user decides to terminate a particular online identity.[11] The demised persona may as well be resurrected in another environment or return under a different name.

## Virtual Rights [2.4]

Offline world rights and freedoms call upon altered virtual interpretations the moment the human being integrates with the world of information. In virtual environments the *right of self-determination[12]* acquires literal meaning. The human, unrestricted by natural laws, decides on its gender[13] or enjoys digital asexuality, while the right is expanded to optional anonymity or choice of representative pseudonyms. Similarly, the infrastructure of the Internet ensures unlimited *freedom of movement*, which in turn is connected to a *right to nationality*,[14] converted on line to *global digital citizenship* or *positive denial of national bonds*. Through this module the body achieves access to infinite *freedom of impression*.[15] Finally, the concept of Virtual Body constitutes realisation of *freedom of conscience* and claims a right over *private sphere* on the user's behalf.

## Digitised Mischief [2.5]

Virtual societies nurture the remanufacturing of physical world behavioural models. The Internet facilitates democracy to one degree but simultaneously encourages sub-expressions of violent tendencies to surface; the technological freedoms it offers and the virtual *non-existence* tempt into misusing the digitised landscape. Virtual *immortality* plays a significant role there, since, unless the hosting structure takes effective control,[16] abusive

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[11]  However, when the user is logged out the body is supposed to be asleep.

[12]  Self-determination in democratic societies depicts participation in decisions affecting eventually the individual (Fleiner [1999], pp. 40-41) whereas the International Covenant on Economic Social and Cultural Rights addresses it in art. 1 as a right to determine political status and to freely pursue "economic, social and cultural development".

[13]  Roberts and Parks, citing King, address transgenderism as the online switching between sexes (The social geography of gender-switching in virtual environments on the Internet in Green &Adam [2001])

[14]  Cranston (1973), p. 32

[15]  Hick, Halpin & Hoskins (2000), p. 218

[16]  The point refers to moderators or any other form of a de facto monitoring authority in virtual settings that can actually detect users behind the veil of anonymity and prevent further entrance. Exclusion, especially if a setting is popular and gathers the majority of one's online affiliations, may cost dearly.

contact remains essentially unpunished once online perpetrators may disappear and be subsequently resurrected under different guises.

Online setups are exposed to the power of the *word*, a notion receiving ambivalent interpretation. The term *Digital Assault* builds an online metaphor of *Physical Assault* and engulfs both forms of *virtual* and *code* attacks. Virtual attack adheres to psychological violence, while the code equivalent includes the use of software to degenerate the target's digital substantiation. The word is the means of conduct on the Net; it postulates a simulation of physical harm through either the infiltrating performance of software or, like in old MUDs, the virtually constructive operation of language, and on the other hand it exploits plain verbal offences.

Agreeably, online personae carry equal capacity to both being perpetrators and victims. The John Doe cases court experience has proven the V2R strength of anonymity, clearly implying further potentialities for non-eponymously registered and thus non-identifiable violators. The anonymous attacker forces his will, hidden behind digitised semblances.

Anonymity/pseudonymity only crowns a huge arsenal of digital weapons lying at the potential infringer's disposal; from data overload and other practices of information warfare[17] to software clandestinely infiltrating systems and data (*spyware)*. However, few of them can truly outmatch the painful effects which *words* impart on the self.

## When Virtual Becomes Real [2.6]

Hobbes theorised a non-aggression pact between beings as the basis for the ordered operation of social formations and conception of the origin of law.[18] A similar silent pact had been established online since the Internet's public inception. Virtual communities enforced internal standards[19] inspiring users with trust in networking computers, opposite to the unfairness which face-to-face physical world contacts had shown. Gradually, though, human misbehaviour managed to pass through, circumventing the terms of *pax cyberia* and making apparent its actual

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[17]  Delibasis (2002) p. 257
[18]  Cranston (1973)
[19]  Hick, Halpin & Hoskins (2000), p. 187

fragility. It was back then that the negative power of words was made apparent in electronic settings for the first time.

Regardless conducted between symbolic manifestations, interactivity of this nature leaves very true emotional impacts. Onscreen messages captivate the gaze of the user and convey attitudes and moods, equally aggressive or affectionate. Language reaches beyond its simple communications function to morph into a weapon. Chronicled in detail by Julian Dibbell,[20] the landmark incident of cyber-rape in the LambdaMOO virtual community still conveys aptly how V2V contacts inflict real unwelcome effects upon humans.

The cyber-rape parallel is built on replicating the inequalities of sexual contrast: "practical" advantages like fast typing skills and assisting software tools empower one user, as online personae cross paths. As rape in the real world consists of more than just the use of force over another in order to engage carnal activities,[21] but also the victim's additional emotional pain caused by inability to resist and unwilling participation in the perpetrator's activities, the cyber-rapist forces the victim to endure text messages, disrupting images and so on. In this respect *cyber-rape is a behavioural communication that victimises the receiver's emotional status.*

Cyber-stalking is another form of online deviant behaviour. Its V2R manifestations[22] have long caught the attention of real-world prosecuting authorities.[23] The anonymous V2R cyber-stalking deployment includes harassing or threatening electronic messages, as also the stalker's repeated presence at the victim's "virtual neighbourhood". Although the distance factor in V2R cyber-stalking reduces considerably the degree of physical threat, and even more its realisation within a V2V context, it imposes the sense of continuous monitoring and "substantial emotional distress"[24] to the

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[20] Dibbell (1998), pp. 11-30

[21] Gruen & Panichas (1997), pp. 393-404, where are also included extracts from a Model Penal Code proposed by the American Law Institute providing further description of the term "force".

[22] Defined as "use of information and communications technology, in particular the Internet, in order to harass individuals. Such harassment may include actions such as the transmission of offensive e-mail messages, identity theft and damage to data or equipment" in Bocij & McFarlane (Mar 2002).

[23] Bocij & McFarlane (Feb 2002) refer to a report prepared by the U.S. Attorney General in 1999.

[24] Michigan state definition provided in Bocij & McFarlane (Feb 2002)

user. Eventually, cyber-stalking induces fear and communicates indirect control over the victim, similarly to offline stalking.

Defeat during a game session upsets the player; the unpredictable loss of stored data from an online account creates frustration. Admittedly, these instances constitute facts of life, yet they are differently assessed if linked to previously implied obligations to abstaining from damaging activity. Inflicted harm upon the Virtual Body, where assurances have been directly or indirectly provided against such an outcome, passes justifiable resentment to the user. The Chinese *Arctic Ice* case was the first in the world to rule that a game owner should restore a player's lost virtual property (game weapons), "because of loopholes in the server programmes that made it easy for hackers to break in".[25]

In direct connection to the previous example may additionally be considered the relationship between interface host and user. It resembles the vertical power structures of states and citizens. The ISP is the card holder who eventually may decide to terminate the lifespan of the Virtual Body or do so by accident. In such an event the damage for the user is irreparable, especially where important personal data are crucially connected with the deleted account, such as an entire list of online and offline contacts. Moreover, the ISP could off-handedly block vital operations that the Virtual Body carries along, to reflect substantial implications even outside the virtual context. On the other hand, the parameters of the issue shouldn't be misappropriated where termination ensues as a final measure under the host's virtual jurisdiction against users that violate pre-agreed rules of engagement.

Finally, Digital Assaults as initiated by states leave a deep impact, due to the inability of the individual to defend her position against superiorly imposed means. Virtual Bodies stand vulnerable opposite to government surveillance practices, online blockades and Code attacks.

In a final look over virtual attacks, the effect of words, being the most frequently met offensive practice online, is strongly pointed out. Abusive expressions inflict pain; injure the other individual's honour, dignity and

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[25] 'Online game company taken back to court for virtual theft', China View 11/02/2004, available online at http://news.xinhuanet.com/english/2004-02/11/content_1310083.htm - 'Gamer Wins Lawsuit in Chinese Court Over Stolen Virtual Winnings', TechNewsWorld, 19/12/2003, available online at http://www.technewsworld.com/story/32441.html

reputation[26] as accumulated and maintained within the artificial environment. Eventually, the virtual is virtual itself once common sense places at the other end of the line the soul and the emotions of real human beings. This is the reason why in terms of online contact the latter are elevated one level above to "observers" by being called "participants".

Opposite to human susceptibility virtuality sits rather transparent.

The materialisation of human consciousness in digitised apparitions of Virtual Bodies provides empirically sufficient evidence of the involvement of actual persons. The semi-fictional, semi-experiential perspective from which online participants understand the development of their communications surroundings has further encouraged the assumption that personality may equally claim its rights across the network and inside its artificial structures.

To one degree, certainly, no matter how far humanity may reach, to the depths of the ocean or to the outer space, it will carry its laws along the way and be bound by their force. However, the resolution of the personality treasure-hunting does not arrive on such easy terms. The empirical subscription to Virtual Bodies does not appeal to the full spectrum of currently dominant social and legal conventions. Regarding approval of new conceptions of personalities that discover the tangibility of their actions in Virtual Bodies, specific questions precede, such as the eligibility of rights and identities along the process of online communications under the rationality of law. Not coincidentally, the appreciation of identities by social mechanisms presents structurally the point from where aspirations for personalities should begin their assertions; the matter determines the recognition by laws of rights both of and over Virtual Bodies.

## Societies, Laws and Identities [3]

### Persons Made of Persons [3.1]

The Internet contested an alternative field of societal conflict. Disputes of legal nature that emerged in proportion to offline engagement models, found difficulties in dealing with particular processes that mark the electronic landscape.

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[26]  Cranston (1973), p. 43

Much has been done and said so far in legal practice and literature, concerning the application of law to online variations of contact. A certain degree of harmonisation between real-world regulatory urgencies and technological interactivity directions has been achieved through reciprocal understandings and interpretations between the two contexts; it may be argued, however, that the results partially promote an intention to secure compatibility of the online setting with pre-existing standards rather than pursuing advocacy where new cyberspace trends are manifesting. On the other hand stands the ever returning question, whether law should absorb every incoming fashion and sanction it as a social precedent; the law, after all, is envisaged to operate as a tool that evades passing superficial changes in matter and remains focused on a minimum arrangement of diachronic social values. The particular argument poses the major obstacle of principle against conceding to expanded legal conceptions of personality.

For one thing, the users' perception of digitised selves that become materially independent entities and surf waves of data across the sea of information was heavily influenced by science fiction visionaries in literature and movies, conferring prophecies of post-apocalyptic doom and aspirations for building future utopias within the confines of "cyberspace." However, the commercial popularisation of the Internet and parallel efforts in humanities studies to connect with online behaviours, reaching to conclusions such as "the cyberspace fallacy,"[27] rationalised down the illusion of a separate plain of existence as one more of the complexities that define reality, which by nature comprises of different virtualities synthesising one total, multi-levelled experience.

And yet, even demystified under the over-analytical scalpel of logic and science, the digitised part of experience feels to those that dwell "behind the looking glass" of their screen displays pretty much real. Interactivity ignites real emotions into the human being, no matter the hosting virtual stage, no matter the mask covering the face. In the end, the different roles we assume within the measure of a single day in our lives come inevitably into sheer conflict with each other. Frustration at the workplace, for example, is later transferred into other areas of daily activity, affecting the manner in which

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[27]  Reed (2004), p. 218

subsequent - though irrelevant to the source of the particular mood - situations are handled. All scattered identities of the thus divided self intersect with each other to determine in total the apparent character of the one complete entity.

## Identities, Societies and Values [3.2]

Societies, in general, are not unfamiliar with the interoperability of roles that resides inside the individual and finally renders him a synthesised rather than an indiscrete unit. They respond by generating normative "defence" mechanisms, usually exploiting expressions of contempt to enforce discipline where the prevalence of one aspect of the self may be unwelcome. The thus articulated indirect recognitions of the human amalgam point out an additional fact, as the existence of the multiple identities that a person bears is primarily confirmed opposite to values that are being held higher at the given time and could potentially be threatened by the outcome of the inner clash.

Within the clutches of our contemporary Western societies we observe such mechanisms as pointed out. The demerit they impose acknowledges multiplicity by seeking to prevent specific identities from "escaping" the self; in contrast, it reveals the true priorities that govern our times. Hence, the politician who gets involved in a minor sexual scandal when answering to the idiosyncrasies of his psyche and body is thereupon considered unfit for serving his position; furthermore, at Western airports passengers of particular cultural background or of external appearances connected with stereotypes of such origins are more frequently picked up for random routine examinations and more thoroughly searched at security checks. Clearly, the each time opted for social standards and priorities, no matter right or wrong the followed path of action may appear in theory – since, we may argue, hardly does the homosexuality of a Minister of Agriculture differentiates him to his colleagues in responsibly performing his tasks, or the terrorism activities of a religious fanatics minority represent a culture of extremely wide breadth – determine what significance colliding roles acquire, to further distinguish between identities worth of being protected and placed under continuous scrutiny..

The law submits its operations to a similar principle, giving for the first time legal substance to human conditions for regulating them. Called in to serve what is deemed necessary to protect for the public good's sake, it illustrates new subjects and objects; where these issues have not existed before in the eyes of the law, they now take shape and equally get voice in courtrooms. Despite beginning with the creation of enemies, this line of reasoning simultaneously gives official ground for those responding defences to challenge their status, enabling them in the long run and under the terms of battle to even contest privileges.[28]

## Contemporary Orientations in Law [3.3]

A few more points are needed to be stretched out on the relevance between treasured social values, identities and the law. In both previous examples of social mechanisms, the qualities coming into scrutiny were not *per se* those parts of the self that would otherwise pass as acceptable or even indifferent: the scenarios pinpointed to dominant contexts enforcing a balance between the various constituents of human entities.

The examples were not selected in random. In the beginning of the 21st century the Western political and social discourse appears to be dominated by issues of security and moral bankruptcy; laws have followed closely. The increased number of anti-terrorism legislation which stormed the scene after the 9/11 attacks have openly weighed against civil liberties. Discriminations have been allowed to perform undisclosed during investigating procedures, an issue that has ignited intense criticism against the U.K. Anti-terrorism, Crime and Security Act 2001. In a different area, the vast majority of Internet laws have been preoccupied with either securing the Intellectual Property entitlements of major industry stakeholders or cracking on controversial morals and ethics, whereas calls for launching a more determined online defence of fundamental freedoms are constantly being set aside.

Hence, it is difficult to start with an argument of rights and from there to promote a hypothesis of thereupon invented personality opposite to legal

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28   The mentioned further below issue of slavery, was legally initiated in modern times with African slaves conditioned as movable property. As more proprietary issues were brought to courts they were challenged and abolitionism ensued.

systems that indulge in fixing their restrictive focus. Moreover, there are considerable obstacles in the way for online identities to claim acceptance in law, when their circle of activities does not involve the degree of demerit that would invite legal interest. The conspicuousness of such a disadvantage takes us deeper into discussing manifested trends and criticising the legal priorities which have apprehended the online landscape, and for thus is selected a particularly controversial case study.

## Images of Innocence, Identities of Guilt [3.4]

In Europe most national online content laws subscribe to a model mainly preoccupied with making firm clarifications over ISP liabilities and confirming penalisation against pornographic depictions of minors. It should be noted that there is no precedent of state legislation introducing online content for the first time with declaratory pronunciations of Internet speech protection.[29]

Measures against exchange and possession of specific pornographic material, aim at striking down paedophilia. Etymologically, the term "paedophilia" does not explicitly define the tangible action to which it has been associated with; it refers to a state of abnormal desire that could lead to *pederasty*, the actual violent sexual abuse of children.[30] Certainly, paedophilic tendencies were not instigated across societies due to the presence of a computer network; paedophilia is a psychological sexual disturbance whose

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[29] Under this reasoning, if not bringing on loud statements that would address directly the multitude of online expression and give guarantees that the state will protect the relevant rights off all its citizens, a different content law initiative would have first sanctioned the integrity of self-published material on the Net. The logical counter-argument to such a proposal would suggest the amount of constitutional and lesser provisions that already exists and extends over Net involvement. In analogy, however, previous penalisation of obscene material should be covering the Internet as well. Therefore, it is tacitly implied that either such legislation was never there before to regulate these matters (thus exposing the state on grounds of inefficiency) or that clearly preference is being given to criminalising the Net instead of safeguarding democracy and its principles in all forms and across all settings.

[30] Arguably, by viewing the material in question the paedophile concedes to preceding sexual abuse of children, captured on picture; thus he is becoming a participant, by encouraging production of such images. However, as the purpose of such measures is to "prevent the exploitation of children by making indecent pictures of them" (UK Protection of Children Act 1978) these laws also prescribe against pseudo-photographs, where an impression is conveyed that "the person shown is a child", s 7 (8), and adults are being pictured with the intention to look like minors. Assuming an extremely hypothetical take on the theme, that the viewer explicitly pursues pseudo-pictures, revolted by the idea of actual children being violated; since no minors were abused and the person in question appears no likely to pursue involvement in pederasty, how could therefore be justified the extended scope of the law against him? The legislative objective, though, is to expand upon both exploitation in production of pornographic material and inciting pederasty.

causes are found in the labyrinths of the soul and has existed before the information revolution, as "*immorality* is not a post-Internet phenomenon".[31] Beyond that, a paedophile may remain an inactive pederast throughout his entire lifespan and perform in parallel as an exemplary worker, a good family man, and a law abiding citizen; in pushing back successfully the physical fulfilment of his urges he does not differ to the majority in a large community, who, in proportion, constrain sexual proclivities or extreme violent tendencies in view of common morality standards and in fear of laws. From this perspective, the activity of viewing pornographic images on screen may be disputed as, in principle, harmless. However, the legislator reached to the conclusion that the Internet spreads paedophilia beyond its insofar kept boundaries and it motivates pornographic industries to produce relevant material through actual children exposure. For thus was introduced full penalisation, reaching down to regulating private possession of images, regardless the source or the manner in which these were accumulated.

Despite appearing over-the-top provocative, the presented argument does not intend to glorify paedophilia or to discredit the appointed scope of laws. On the contrary, its purpose is to comparatively underline circumstances that push laws to engulfing even the least sound externalisation of an issue. The author wants to argue that laws do not proceed with similar zeal in regulating across the spectrum of online activity. Thus is signified a priorities perspective which unfaithfully fails to pay tribute to the ethos and political freedoms that have sustained modern democracies and enabled them to proceed uninhibited with deciding upon their law making choices; for that it is exposed to criticism. Even if the paper's aims had been less quixotic than researching legally convincing concepts of cyber-personalities and had employed a rather pragmatic look over conflicts on the Net, our societies show enough reluctance to initiate firmer implementations of the human rights scope to discourage it from proliferating.

In their most elusive digitised manifestations users exist only for criminalisation purposes. No matter abiding by either R2V or V2V communications, they will be hunted down for exchanging images of naked children. The identity of the strictly online paedophile is rightfully

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[31]  Hick, Halpin & Hoskins (2000), Preface, p. xi

appreciated and quickly connected to its offline source. However, a legal foundation which would convince of the most sacred values of democratic social formations and chase their realisation independent of the posed setting has not been analogously sponsored. Therefore, the lack of such a vindication scope weakens dramatically the prospects for rationalising online human identities on the basis of fundamental freedoms.

Even where common law systems could condition for online personalities of this theoretical breadth to infiltrate with relative flexibility the body of rules by appealing to the judiciary's insights, without its prior positive predisposition a national setting difficultly would come closer to conceding for like personality identifications, whilst such inclinations seem anything but visible in the horizon.

## Preliminary Conclusions [3.5]

Summarising the up to this point deployment of examples and thoughts, formalisation of identity ensues struggles of social, essentially political and legal character once these have reached in common to a point of agreement. Additionally, in the language of law identity entails the appointment of legal subjects. It is a technical task that returns ontological effects[32] into the premises of all generating backgrounds: primarily, identity expresses rights,[33] and, in this sense of empowering entities, its recognition is plausibly followed with precaution by the relevant socio-legal settings.

Understandably, our contemporary legal culture has reserved conventional limits for establishing individualities. Opposite, the offline human fights continuously for being accepted on her inherent variety of "identities" and, for thus, seeks to validate each one of them. On the other hand, the online communications presence signifies the self; consequently, a responding symbolic caption in the real world of rules would celebrate the end for the quest for a solid referent.

Beyond just the matter at hand, the individual exists as *one*; those qualities we may address as separate identities for the sake of the argument are, in reality, concentrations of rights that relate with a range of action. Therefore, questioning online personality means aspiring to expand over the online

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[32] Douzinas (2000), p. 259
[33] Ibid., .p. 255

setting the rights that come to be associated with the human being and, accordingly, guarantee its protection.

In this course of legal debate, the rhetoric of human rights and civil liberties was frequently brought into focus. However it may sustain a strong subjectivity argument at later stages in courtrooms, apart from general declarations and guidelines, its broad theoretic scope is hardly ever utilised to initiate functional matters in law. Returning to a previous critical observation on the constraints that have been imposed in practice over the proliferation of the rights dialectic, the issue of personality may remain jurisprudentially rooted within the abstract human nature, yet employs alternative legal paths to subjectivity.

## Playing with Law: A Question of Subjects [4]
### The Game of Rights [4.1]

With the analysis on the Virtual Body, its attributes and operation variants in mind, alternatives to personality other than straightforward appreciations of a human self come into view with a twist.

Historically, the struggle for rights and personality as citizenship was rarely succeeded by the self-evident philosophical foundation of humanity. Law is a game, a symbolic apprehension of life, restricted to representational sets of rules. Like in every other game, the best way for one to win is either by cheating or by using the rules to his advantage, maybe by bending but not by totally breaking them. In any case, this leads to posterior efficiency checks that work towards improving the regulatory setting. The world of sports presents simple examples, with continuing amendments to previous regulations that seek out to maximise excitement as well as fairness in the game: in football, the offside rule and recently enforced restrictions in the manner the ball is exchanged between players and the goalkeeper of the same team[34] illustrate best this argument.

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[34] "A player in an offside position is only penalised if, at the moment the ball touches or is played by one of his team, he is, in the opinion of the referee, involved in active play by: interfering with play or; interfering with an opponent or; gaining an advantage by being in that position;" "An indirect free kick is awarded to the opposing team if a goalkeeper, inside his own penalty area […] touches the ball again with his hands after it has been released from his possession and has not touched any other player; touches the ball with his hands after it has been deliberately kicked to him by a team-mate; touches the ball with his hands after he has received it directly from a throw-in taken by a team-mate." From the "Laws of the Game 2006" booklet, published by the Fédération Internationale de Football Association.

Rights and political empowerment of modernity were first achieved less by opposing the preceding status quo with moral properties that by contesting an argument of actual property. The economic strength which the French bourgeois had acquired, their control over material goods, was the practical ground which they stepped on to challenge monarchy in the second half of the 18th century and to make official new subjectifications and relevant liberties. From the political revolutions that introduced modernity to the technological revolutions which define post-modernity and then from property to intellectual property, a daring hypothesis proposes both using and bending the rules of the legal game, towards introducing new qualities of subjects.

In a long tradition of jurists, the Spanish scholastic Suarez claimed that "natural men posses property rights" over their own freedom;[35] later on, philosopher John Locke suggested property as a conceptual means and ends for securing individuality.[36] Bringing together the above two viewpoints, not in direct approximation of their contents but as enunciations of an underlying thematic logic, enables us to correlate property and rights for online personae. If indeed rights express identity and *vice versa*, and property reflects a right, a subject in law might take shape where Virtual Bodies pose objects of material and intellectual nature.

## Subjects of the Virtual [4.2]

Little problems, if not at all, befall upon the determination of the subject and its rights as far as an online relationship develops on a R2R basis. Conflicts are resolved through the usual offline channels, independent of the private or public standing of involved actors. For example, the *Gutnick* case[37] implied an issue of online defamation between two internationals. A common question over Internet justice, the selection of applied jurisdiction,

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[35] Tuck (1979) pp. 54-57

[36] Locke's fundamental insight was that through property related activity, the individual "creates and owes value through his own efforts" and thus "[s]elf-reliance and creativity become the marks of human achievement, acquisitiveness the mark of self realisation and dignity," Douzinas (2000), p. 83. The pursuit of happiness acquired prominent place in his writings and the acquisition of property, as an activity of individual empowerment, was acknowledged as the key means towards fulfilling the annotated objective.

[37] Dow Jones v. Gutnick [2002] HCA 56, 10 December 2002. Gutnick v Dow Jones & Co Inc [2001] VSC 305; [2001] ACL Rep 85

dominated the procedures and occupied legal scholarship. The interest which the Gutnick case proliferated originated to the originality of the dispute, that being a clash of national laws over the undefined inter-nationality of the network. The decision did not offer great surprises as in the end it appealed to the principles of international resolution.[38]

On the side, however, it managed a heavy hit upon those dreams of virtuality, by reminding that the Net, although unique in exceeding terrestrial boundaries, does not constitute a different place, at least as far as questions of law demand answers.

A considerable weight is now placed upon moving on with treatments on possible V2R and V2V personalities: if the idea of the virtual collapses then further elaboration falls automatically short of ground. However, the law defies spatial virtuality on physical terms; intellectual virtuality is not affected or analogous capacities to develop a notion of space, built on abstractions which the law itself admits.

The artificial creations which operate in the real world do not, primarily, exist beyond the *idea* of being. Despite incorporeal they may be connected with tangible assets. In parallel, the online virtual person does not "live" on the Internet; it simply makes its existence palpable through communications activities as manifested in Virtual Bodies. It also retains to possessions, like managing and storing personal data. Online personae are born online as other fictions are licensed to be born on paper.

Therefore, facing all online artificial landscapes with the rational predisposal they are but mere channels within a conventional means of communications, online anonymity that is materialised in e.g. a blogging account (which is incidentally managed by several undisclosed users) simulates its counterparts in offline environments. The implied legal consequences of such a conclusion will be elaborated below.

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[38] Admittedly, the situation that deemed resolution in Gutnick was the territorial implications that the Internet brings in, an issue without accurate precedent in straight offline conflicts. From that point of view, it was more complicated than the impression given in the text. It questioned the extent and impact of an action across the medium, which, profoundly, produces due to its nature difficulties in enforcing a rule with absolute confidence in the realisation of its perspectives.

**The 20Q Game** [4.3]

Having prepared the field on which all insofar explored themes are meeting together the discussion will be brought into full circle through a game.

The popular "20 Questions" (20Q) game,[39] which the paper's title suggests, is used here as a parable. In 20Q a person thinks of an object or substance and is being asked "yes" or "no" questions, until the other players find what he has in mind. Here, the targeted object was early given away in the introduction and most of the in the process anticipated questions have been indirectly asked.

However, the reader is kindly asked to participate in this intellectual exercise of deductive reasoning with similar creativity to the one recruited by 20Q players. Part of the fun of the game is found in the differences between opinions that emerge over the qualities of the item in question and thereupon attempts to rationalise each one's understandings with the other's logic. For example, thinking of a piano, the answerer is asked whether to use the object one needs to pay; instead of answering "yes" or "no" he answers "sometimes", being of the viewpoint that one who already owns a piano (coming to its possession from her family) doesn't need to give money when she plays music at home, but she might need to if she rends conservatoire facilities for practising. When at the end of the game round the item is revealed to the group and the progress itself is being assessed by the participants, the questioner argues that the particular answer was wrong because the piano owner has to pay to buy it – an approach which contradicts the answerer's perspective. Fundamentally, none of the two opinions is incorrect, since both utilise equally plausible logics. The conclusion, the feedback which both sides taking part in the game receive, is a synthesised approach to perceivable entities and notions.

In the introduction was reserved a lack of definitive answers regarding personalisation of the online self, in promise of the upcoming "experiment". Since, for the time being, the personalisation issue postures a rather ideal subjectification solution, its feasibility remains to be conditioned inside the mind of the reader whilst weighing the questions and arguments at hand.

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[39] An online version of the game, and actually in many different languages, may be found at http://www.20q.net/

**Do online persona attain to substance?** [4.3.1]

The virtual self is externalised through the activities of the adopted body. Regardless the image it receives onscreen, the Virtual Body consists of information and data that have been stored on a server or on the user's system. Stored data, for the purposes of law, is an accepted form of property. If the operation of the Virtual Body is to be identified with the persona, then the latter acquires substance through the former; if not, then it is to be decided who owns the stored data.

The matter is easier to be resolved when the responding account belongs to a fully registered offline person. Then we may contain data property into a R2R appreciation, or, alternatively, attempt to construct a conceptualisation of autonomous legal personhood, detailed further below.

Lacking direct connections to a particular user the online apparition postures increased difficulties against realising subjectivity potentials. The data property requires a legally valid claim over it, *ergo* a valid possessor or owner.

From a different perspective, the preferences that determine the visualisation of the Virtual Body constitute an idea. Assuming the utilised software being a tool for materialising this idea, the amount of combined written descriptions, images and sounds that are attached to a particular persona express a creation, perceived now under the scope of intellectual property. Hence, the product of the mind is the substance in its abstract conception and not as the *per se* electronic data.

**Do online personae suffer the same way offline entities do?** [4.3.2]

Certainly they may be blocked from entering virtual spaces, their interface may be partly deactivated without their consent or, eventually, they may be terminated. One of the strongest arguments that have been posited against potential affirmation of online personae has been their limited lifespan, as observed in practice. Users will jump from online service to online service and from one nickname to the next, apparently avoiding intimacies within electronic environments and seeking out to maximise their privacy.

One fact, however, that may not be easily forfeited is the permanency which millions of users around the globe attempt to sustain in regard to

their online identities, in a similar manner to which a personal telephone number constitutes a vital asset towards societal integration: its loss imposes substantial difficulties with the possibility of damage upon a communications based circle of activities; its enduring operation guarantees long-standing and uninterrupted access to the individual. For constant online participants their personae, their digital guises, represent more than simple means to be reached: they reincarnate them electronically.

If the permanency objection should be put on the table for legal examination, there are prescribed in law artificial persons that explicitly pertain to temporary periods of time. These are partnerships, set up for a short duration, yet respectively attaining to rights and responsibilities. Therefore, in comparison with already existing practices, the prospects are not eliminated by the temporal character. Plausibly, on the other hand, what credibility an online persona may contest against being passed for a circumstantial façade is a matter to be resolved by common proof of its truth, as most issues in law are decided upon practical assessments over evidence.

The essential impacts that interference with the Net persona might bring on, discussed above in relation to Virtual Bodies, may be further on founded on the works of scholars, such as Shirley Tuckle. Tuckle's extended research analyses in detail the emotional connections that bind together users and online identities. The electronic mask is a buoy floating on the cyber-ocean; it implies directly that somewhere beneath the waves exists a human anchor, firmly grounded in reality. The person behind the person is the actual recipient of what involves on the Internet. If, to expand upon the metaphor, the sea-currents and waves are strong, no matter how heavy, the anchor will be slightly dragged from its former position. In the end, depending also on how invested they are in their electronic manifestations, users are essentially affected by those changes that their alter egos undergo.

### Do online personae die? [4.3.3]

Virtual Bodies do die. Accounts are terminated, they dissolve into bits and bytes and that's the end of the story. However, do personae cease to exist the moment the offline person dies? This is a tough question to answer confidently, since the virtual person is in its function a pure manifestation. Although primarily it incarnates human conscience, for those that address it

on the Internet it is *ipso facto* what it appears to be: a name, a tag, a sprite. MMOG characters, for instance, are transferred in online markets, their user passwords sold along with the full control over their future exploits.

The space we acknowledge as the real world is overpopulated by artificial persons, who, despite internal changes in management and policies, continue to exist and perform long after their original founders have passed away. If the original user ceases to be, her Internet account may lay dormant and eventually wither in the sea of information until deactivated through automated maintenance procedures, but may also be acquired and utilised by another human.[40] Those that interacted with it before might notice striking behavioural changes, yet the point remains that this particular digitised entity will continue to operate online.

A similar idea envisages the distinctive perspective of imparting online personae as owned fictional creations. This is a relatively recent theory which hypothesises creator's rights over online game characters.[41] Beyond the legal controversies which logically surround it, the as suggested issue inspires a different look into the evolutionary process that fictional creations undergo without the participation of their initial creators. We may pick up one popular culture icon of our era, one which was born and nurtured into a world well rooted into Intellectual Property laws: the comic-book character Batman was created in 1939 by American cartoonist Bob Kane. It is long ago, however, that Kane retired from scripting the character's adventures and only a few years since he died. Batman in the meantime has matured; dozens of editors and even more writers have taken his story steps beyond, its continuity progressing accordingly. "Batman begins" was the title of a recent theatrical release: "Batman continues" we may comment on the commercial and legal standing of the comic book that has outlived its creator. Batman is protected by both copyright laws, against unwelcome interference with the written works, and trademark rights that prevent

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[40] The example does not apply to paid accounts, where the user is also the registered subscriber.

[41] Suggested reading on the matter, Lastowka G. & HunterD. (2004), 'The Laws of the Virtual Worlds', California Law Review, Vol. 92, No. 1; Yoon, U. (2005) 'A Quest for the Legal Identity of MMORPGs - From a Computer Game, Back to a Play Association', Journal of Game Industry & Culture, Vol. 10; Fairfield, J. (2005), 'Virtual Property', Boston University Law Review, Vol. 85, p. 1047; Castronova, E. (2005), Synthetic Worlds: The Business and Culture of Online Games, University of Chicago Press; Taylor, T. L. (2006),Play Between Worlds: Exploring Online Game Culture, The MIT Press

usage of the character's visual image without previous authorisation by the lawful owner, publisher DC comics.

Bringing together examinations of "orphaned" or transferred online accounts, viewed in parallel to instances of legal personhood, and the additional case of fictional creations, the potentiality of online personae claiming a degree of autonomy and even protection on the premises of law appears relatively palpable. Although distant from the as currently standing legal parameters it recruits, this scenario sketches a theoretical extreme of feasible personality challenges.

### Do online personae have rights as freedoms? [4.3.4]

As long as real, offline persons find it difficult to defend their liberties (especially where relationships between users and ISPs are mainly interpreted in legal practice as strictly horizontal through their contractual basis of online agreements, despite the power structures they emulate) even less space is offered for recreating analogous protection frameworks for entities of obscure status.

However, a lesson of playing with the rules comes to the surface, which the previously mentioned *Arctic Ice* case made firmly apparent. The violated integrity of the online game character -a virtual person- sough out for compensation, not on moral grounds and the ensued frustration, but where the damage on the character was reviewed as destruction of property. The consequences of the as reasoned decision –which, incidentally, incited further similar court action in China- appear crucially promising.

For once, the issue of online property moved through formal legal channels and was placed under serious examination. Circumstances towards which the law had stood oblivious until that time were now granted with indirect recognition, contesting their identification in court.

The matter might be taken a bit further, by remembering that human slaves were first rationalised in laws as protected property of their masters. Therefore, since the mechanisms of contemporary law have reached up to endorsing inanimate and abstract properties with limited subjectivity, online personae, developing to more complicated models of interactivity capacities as technology continuously progresses, could anticipate their proprietary function to perform as the key toward actual entitlements.

## Concluding Comments: Subjects in (Cyber) Space [4.4]

Artificial legal creations have managed to contest human rights in courts.[42] Douzinas observes that:

> *"[t]he common complaint about the excessive legalisation of the world is the inevitable outcome of the legalisation of desire. Desire became the formal expression of the subject's relationship with others and the polity and was given […] legal recognition"; "[T]he multiplication of right-holders, the proliferation of claims and the endless mutation of the objects of right was a matter of time, of letting language, politics and desire do their work."[43]*

The comment may be read as a supporting argument and at the same time as an aphorism in respect of the examined prospects for instituting new personalities.

On the one hand, technology gradually takes control over our world. Before the last quarter of the 20th century no one would have really imagined the enormity of an international computer network; during its last decade, the prospect of the Internet infiltrating socio- economic structures with such dynamism seemed relatively distant. The relevant forces that have emerged from both the offline and online contexts have posited a new order of things, which has dictated the disposition of laws. Commercial interests posit a valuable asset in the development of capitalist post-modern societies and have given a new boost to introducing increasing numbers of legislation with focus on economy protection. Within this reality of altered values, [the power of moral citizenship] is waning opposite to reformed priorities. In order to develop its personality under these new conditions the human being is forced to play by rules benefiting the growing desires of economy. If "resistance is futile" and "assimilation"[44] presents the only available option, a necessary balance opposite to the rights of the mighty may be struck only with counter-rights. Thus, the discussed subjectifica-

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[42] The Council of Europe, 1st Protocol of the European Convention of Human Rights and Fundamental Freedoms: "Enforcement of certain Rights and Freedoms not included in Section I of the Convention; The Governments signatory hereto […] being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms […] have agreed as follows: Article 1 - Every natural or legal person is entitled to the peaceful enjoyment of his possessions;" e.g. The Sunday Times v. the United Kingdom (1979) 2 EHRR 245; [1979] 2 EHRR 245; [1979] ECHR 1; [1980] ECHR 6; 6538/74 ECHR (26 April 1979)

[43] Douzinas (2000), p. 261

tions move into the picture, as certain weaknesses in the legal appreciation of the human rights doctrine expose individuals to uneven battles on the premises of private law.

On the other hand, rights turn into "recognitions of a desire that never ends".[45] What is prescribed here is a vicious circle of entitlements stepping on opposing powers. Admittedly, though, this has become the course of legal progress; the empowerments we define today as human rights or civil liberties are far too developed from their original pronunciations. Development, though, may not need to depend on legal reproduction. If, indeed, it is the human ideal that seeks protection into those mirages of subjectivity, reason calls for strengthening its current manifestations than scattering it over multiplicity and allowing its divided potency to whither. Whereas identities –more or less imposed by redefinitions in the socio-technological evolution of humanity- fall short of legal appreciation, they should be more vigorously contested opposite to derivations from the humanitarian scope. In addition, the over-popularisation of laws promises certain procedural confusion.

Eventually, online personae, within the enduring unpredictability that stimulates societies towards establishing functional normative solutions, may be awarded with subjectification, as conjectured in the fictionalisations above; and in parallel, property and intellectual property may, indeed, entail the indirect path towards revitalising the online human. Legal history has to show numerous instances of unconventional, revolutionary conceptualisations that came in to challenge their preceding settings; legal personality and intellectual property rights, as acutely relevant to the argument, set the obvious example. Supposing that such an outcome appears inevitable at some point in the future, it should be welcome on a condition of negotiating the bargaining position of "needs" and not rushing in to meet the temperamental calls of "wants".

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[44] The phrase "resistance is futile" is famously used in popular culture by the Borg, a race of alien cybernetically enhanced humanoids from the Star Trek TV and movies series. The Borg operate as a collective entity, lacking of individuality amongst their ranks. They travel across the fictional universe and increase their numbers by submitting to their will with force any species found on their path and subsequently by assimilating them.

[45] Supra. 43

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