Electronic commerce has the potential to deliver goods and services to customers more quickly, cheaply, and conveniently than ever before. But before performance the obligations have to be created. This paper explores the semiotic and legal aspects of online contracts. It reviews speech act theory from philosophers such as Austin and Searle to explain how words and actions can create legal obligations. It then examines English contract law and its requirements to find an abstract basis upon which contract creation can be modeled. Using semiotics and law, the paper thereafter creates a model of the contract creation process and applies it to electronic commerce in intangible goods. Since electronic commerce is so pervasive and extends beyond any particular jurisdiction, the need is destined to increase for high-level abstraction and for a model for comparison and cross-reference.

By establishing agreements and expectations regarding future actions, contracts enable business to be conducted in a stable context. For example, contracting parties know when to expect deliveries of raw materials, and can thus optimize their manufacturing processes, making gains in efficiency. In addition, if something goes awry and a party breaches the contract, the injured party can seek legal recourse.

In traditional commerce, people create commercial contracts in-person, and the courts and legislature have developed an extensive body of contract law to govern these transactions. Among the legal requirements are the four elements of any contract: offer, acceptance, consideration, and intent to create legal relations, as discussed in Part II. However, these requirements are not merely for the benefit of jurists and legal scholars. Merchants incorporate contract law into their standard business practices not only to satisfy the law, but also to conform with informal norms and to prevent misunderstandings with customers. The four elements of the legal contract derive largely from the fundamentals of any negotiating process. The law has merely formalised the elements and the process. Furthermore, businesses often use the ceremonial aspects of the contract creation process for their “cautionary effect, thereby deterring hasty, premature or ill-considered contracts from being made.” People understand that signing a document creates legal obligations and that it should not be taken lightly. However, rituals in the virtual world with similar significance have yet to be established.

The legal and social aspects of contracts have similarly important roles to fulfill in the new world of electronic commerce. Merchants need contracts not only to secure their legal rights, but also to prevent consumer misunderstandings. But contract law and standard business practices have had little time to adjust and develop to handle the virtual and ephemeral nature of cyberspace. Will the long-held traditions and principles of English contract law be flexible enough to accommodate this new commercial medium? Will on-line contracts be accepted and enforced by the courts?

Even more importantly, will contract law be consistent with commercial norms and practices and will consumers readily comprehend the meaning and consequences of their actions online? A mismatch between law and practice could result in misunderstandings, injustices, inefficiencies, and added costs. Even more so than mail order catalogue transactions, on-line transactions in intangible goods predominantly gain competitive advantage through lower prices from the
reduction of distribution, intermediary, and overhead costs. Therefore, the margins in electronic commerce will most likely be razor thin and unable to absorb the costs of consumer misunderstandings, disputes, and particularly litigation. Electronic commerce will demand the utmost legal and commercial certainty in on-line contracts, otherwise its enormous potential will not be fully realized. This means that there will need to be certainty and understanding about the significance of online behaviour, both from the merchant and customer side.

The complementarity between the semiotic approach taken here and law in contracts forms the focus of this paper. Semiotics can be applied to informal matters: how people interpret on-line actions, how certain signs or actions can lead to contractual obligations, and what assumptions there are about contractual terms and conditions. Contract law, on the other hand, specifies only the formal requirements of contracts. In addition, the law considers outward appearances rather than actual intentions in making contractual rulings, and also frequently considers the assumptions of a ‘reasonable man.’

For the most part, this paper will address consumer contracts for intangible goods made by means of the World Wide Web. Consumers (parties conducting transactions outside the course of business) are most likely to be confused and unaware of the developing norms, conventions, and laws in electronic commerce. Technically speaking, intangible goods (e.g., software, video, music, and other digital information content) could be equally classified as digitised services, and English contract law does draw distinctions between goods and services. However, in order to avoid these legal niceties, more generally applicable principles for transacting and contracting online will be discussed.

The first section of the paper discusses the principles of semiotics, and how the use of particular signs, symbols, or actions in a particular context can create moral, social and legal obligations. This section will concentrate principally on the philosophies of John Searle and J. R. Austin. The next section examines the English law requirements for contract formation, specifically the phenomena of offer and acceptance, as well as consideration, the intent to create legal relations, and the presentation of contractual terms. As previously mentioned law and semiotics are intimately related, and later the paper brings them together to create a semiotic model for the ‘traditional’ contract. This model suggests what principles should be observed and what elements should be present during the formation of an online contract. Finally, using the model, we make recommendations and compare them to the purchasing process found on the Web site of an online retailer of intangible goods.

**Signs and Negotiation of Obligations**

Semiotics is “the process of analyzing signs and how they function.” In the past, research in the information systems field, including Stamper (1987), Backhouse (1991), Dhillon (1996), and Backhouse (1996) have applied semiotics attempting to highlight the role of meaning and culture in communication as traditional work environments move toward the use of information technology. The success of these studies suggest that semiotics could provide valuable insights into constructing on-line contracting environments. Liebenau and Backhouse (1990) divide the concerns of semiotics into four levels for analyzing ‘speech acts’ communication acts such as stating, asking, and most importantly to this discussion, making promises and contracts. The four branches are: pragmatics, which addresses the culture and context of the speech act; semantics, which studies its meaning; syntactics, which deals with form and formal rules; and empirics, which examines codes and signal transmission. Above and below these concerns lie respectively those of the business itself and those of the physical world.

As mentioned in the introduction, the primary motivation of this paper is to study contractual misunderstandings between consumers and merchants in electronic commerce. Thus, semiotics, with its focus on signs and meaning, provides an instructive view of the phenomenon of contract. After all, at the most fundamental level, the contractual process is an exchange of certain signs or symbols (emprics) between two parties. The signs, if performed in accordance with an accepted procedure (syntactics) under the given context (pragmatics), convey meanings (semantics) from which contractual obligations arise, which is the purpose of the process. This basic semiotic deconstruction of the contractual process is summarized in Table 1.

Interestingly, using the perspective gained from the above analysis, the contractual process can be split into two major semiotic divisions: ontological and epistemic. On the ontological or physical side, contracts involve formal procedures (syntactics) and physical utterances (empirics). However, on the epistemic or ‘thought’ side, contracts require a