

BOOK REVIEW

LAW AND INTERNET CULTURES

By Kathy Bowrey

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We are living in a world of rapid advances in information technology. These advances have the power to spur globalisation, forge new communities, and stimulate innovation. However, these advances also can create new cultural, social, political, and legal quandaries. In this book, Kathy Bowrey attempts to interweave all of these issues together in examining the relationships between law and internet cultures. The author hones in on the importance of communities in these types of examinations as “in relation to the internet, the idea of law changes, depending upon the context and the nature and concerns of the relevant decision-making community” [p.20]. Specifically, the book “explores the way internet communities involved in contemporary conflicts, represent themselves and others – what they see as problems and what it is that they want to be done” [p.16].

Bowrey structures her book through the use of narratives as introductory representations of broader issues involving law and technology in each of her chapters. This narrative structure is purposeful, as the author expresses a desire to “look at how stories are a form of power and knowledge” [p.16]. The story selections of Bowrey truly range the gamut of references, as these selections include personal anecdotes [p.1], popular culture analogies [p.137], references to classical fourteenth-century manuscripts like *The Travels of Sir John Mandeville* [p.28], and allusions to contemporary works of fiction like George Orwell’s *1984* [p.82]. Because this book presents such a wide variety of angles on internet law, a closer examination of each chapter is warranted.

Bowrey’s first chapter, “Defining internet law,” attempts to encapsulate the definition of internet law – blurry though it may be. She details RFCs, “the technical standards for computer networking” [p.1]; discusses an internet culture of sites who opt to not follow the established protocols of RFCs; and outlines the sometime difficulty of interfacing law with technology. This latter point is a salient one to current debates among legal circles. Given the advances in technology, courts, legislatures, and administrative bodies often struggle to match such advances in judicial determinations, statutory law, or regulation. This struggle came to the fore in the 2002 *Dow Jones & Company, Inc v Gutnick* case, which Bowrey emphasises in this chapter. In the *Gutnick* case, the Australian High Court determined that an individual could bring a defamation lawsuit against United States-based publisher Dow Jones for an article that was available to subscribers on its website and that was downloaded by only a few of those subscribers in Victoria, Australia. The case was met with a torrent of criticism, largely decrying the Australian court for overstepping the bounds of its jurisdiction. Importantly, as Bowrey states, this case details when domestic law and jurisdiction may be implicated, if the perceived wrong has been categorised as such

by the applicable lawmaking body. Perhaps more importantly, however, Bowrey points out that even “[o]nce the hurdle of finding an actionable wrong is overcome, whether there is legal recourse will still depend upon the attitude of the courts to the cultural and jurisdictional dilemmas posed by the facts of the case” [p.12].

In the second chapter of the text, “Defining internet cultures,” the author elaborates upon internet cultures, which is yet another elusive term to define. Bowrey uses the work of Lyotard and Mandeville’s *Travels* to connect to her discussion of mapping internet communities and the dot-com bubble. She utilizes the boastfulness of Mandeville in his exploits as a comparison to the prideful attitudes of many supernova-like dot-coms, like Pets.com, prior to the burst of the bubble. Yet, Bowrey does not focus on these past events as mere transgressions of economic models; rather, she attempts to take a meta-lesson away from these circumstances, although this meta-lesson is not explicitly elaborated. Instead, the author shifts her analysis into a discussion of the movie *The Matrix*, arguing that technology need not destroy community and that it can foster new types of cultures and lessons learned for the future.

Chapter three, “Universal standards and the end of the universe: the IETF, global governance and patents,” provides a description of the Internet Corporation for Assigned Names and Numbers (ICANN), the United Nations-endorsed World Summit on the Information Society (WSIS), and the Internet Engineering Task Force (IETF). Bowrey talks about each of these internet players’ cultures and their roles in a type of governance of the internet. This discussion outlines each of these parties’ potential to make strides towards universal standards; however, the author also addresses the global skepticism that accompanies such potential: “How do we know that this new mode of governance based on consent and civil consensus is not still just a demand for polite acquiescence to similar political objectives to those previously associated with repression and imperialism exercised by developed countries via the authority of nation states and their associated power blocs?” [p.67]

In Bowrey’s fourth chapter, “Linux is a registered trademark of Linus Torvalds,” the author details the history and origins of open source and its connections with copyright law. She compares the principles of the Open Source movement and the Free Software movement to “corporate” intentions, articulating the “concern that corporates might take advantage of the tools provided by the open source community, but foster an environment of personal detachment and self interest” [p.87]. This divergence in motive provides a perfect segue to the introduction of Microsoft, which the author demarcates as Other.

As such, the fourth chapter sets the stage for chapter five, “In a world without fences, who needs Gates?” This chapter “explores Microsoft as an archetype of the information economy – a model of action and commerce, and a trickster that generates demands for legal institutions to better manage innovation, wealth creation and global information markets” [p.104]. The author dissects Microsoft’s conceptions of innovation, stating that what sets it apart is the corporation’s “ability to *identify* market trends early and managerial action on that knowledge in the workplace – making whatever changes in structure, personnel and priority are deemed necessary to capitalize on the development” [p. 107]. With this foundation, Bowrey discusses the economic, legal, and sociocultural impact of the Microsoft antitrust case, from the interdependence of the judiciary and the media to the anxieties that the case produced in the context of globalisation standards.

In the sixth chapter of the book, “Telling tales: digital piracy and the law,” the author delves into the controversy of digital piracy, latching onto the “MP3=Communism joke” as her defining theme. She squarely discusses the relationship between the debate about digital piracy and copyright law, stating that “it is through copyright protection devices like digital rights management that ‘inconspicuous consumption’ becomes observable, managed, and commodified” [p.148]. Bowrey then addresses the Napster litigation, making the most tangible application throughout the book of law and internet culture:

Law’s role is cast as making the virtual concrete – making what we already know about the internet fully arrive, forcing the competitor to conform in its business practices to those of the ‘real world’ and transforming a mere market projection into something more secure. Were law to act otherwise, law would be conspiring in an ‘illegitimate’ future, in the sense that it would constitute a misuse of an established nexus between capital and copyright law [p.151].

The author then states that, this concreteness of law aside, the actuality of the debate against digital piracy does not jibe with purported claims that “copyright is primarily about saving an important creative and property relation between an artist and their consuming public” [p.160]. The chapter concludes with a prognostication that this inconsistent message will likely result in the creation of new internet communities that will take creative approaches to licensing and that will find identity in this creativity.

Bowrey’s last chapter, “Participate/comply/resist,” builds on this idea of creation of new community via the internet. She touches on the significance of increased communication through the use of the internet in developed countries; how this new, rapid communication is now often taken for granted; and how this increased interaction could serve as a hallmark for a new society. She wonders if “a global expression of ‘civil society’ [can] develop to contribute to global governance and moderate the power of corporations and the nation state” [p.178]. This chapter then outlines certain global initiatives that are being made in order to formulate regulation of the internet. The author, in reflecting on these initiatives, articulates an “overriding concern...that the shift from an apparent absence of regulation to an emerging body of cyberlaw carries with it a corresponding erosion of previously held freedoms” [p.191].

Ultimately, with regard to the idea of internet governance, Bowrey advocates “spreading models based on U.S. civil society and academic leadership” [p.193]. However, this advocacy is a tempered one, as reflected by the author’s words:

For me the dilemma is the need to support U.S. developments that may eventually lead to changes in U.S. domestic law and corresponding changes in the international context, whilst still keeping alive a more independent space for local reflection, and targeted action and inaction [p.194].

This articulated dilemma finds resonance in Bowrey’s conclusion, in which she states that although “[l]aw creates and denies possibilities of community... [t]hese legal spaces do deserve better and further ‘pragmatic, experimental, stuttering, tentative’ consideration” [p.199].

Appropriately, in this book, Bowrey does present a “pragmatic, experimental, stuttering, tentative” approach to the application of law to the internet and advances in information technology. Her multifaceted treatment of the dot-com bubble, universal standards for internet governance, corporate tech conglomerates, digital piracy, and activist citizenship as related to internet regulation introduces a different kind of inquiry into the milieu of intellectual property and technology law. Admittedly, at times, her analysis, as couched within her narrative structure, seems somewhat disjointed. Because of their expansive range, Bowrey’s emblematic, short vignettes, by their very nature, introduce a lack of consistency and clarity into her argumentation. However, perhaps, the author deliberately included such a hodge-podge of narrative analogies into her text as a way to emulate the internet itself, a portal that allows for access to an overwhelming amount of diverse information and that carries with it great potentiality for accompanying legal issues.

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