

Chapter 1:

The Internet, law and society (EXTRACT)

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Reflecting the agendas already described, Part II (“Governance of the Internet”) commences with the theme of the “Governance of the Internet”, including Chapter 2 on “The roles of government and the private sector in national/international Internet administration” by Stephen Saxby and then in Chapter 3 an exposition of “The governance of the Internet in Europe” by Andrew Charlesworth. Others have also noted the significant interest of the European Union in the Internet,¹ which is indicative of the delimitation of the traditional regulatory powers of national government but, given its “light-handed” approach,² still allows for informal, self-referential and localised normative structures. In Chapter 4, “Jurisdiction and choice of law in a borderless electronic environment”, Alan Reed goes on to indicate the further implications of transnationality in relation to specific problems such as Internet defamation and trade marks.

Turning away from legal and political boundaries, Internet impacts in relation to legal institutions and professions are considered in Part III (“Legal institutions and professions and the Internet”). The cultures and working practices of the legal professions are considered in “The new electric lawyer and legal practice in the information age” in Chapter 5 by David Wall. Having spent an estimated £2 billion on computing equipment during the past 25 years, has the impact been good or ill, either for the lawyers or their clients?³ The take-up in relation to UK political and governmental life is the theme of Chapter 6, “Cyber-Constitutionalism and digital democracy” by Clive Walker, with a return to law-related spheres, and the experiences, essentials and opportunities of law enforcement on the Internet, in chapter 7, “Policing the Internet” by David Wall, and Chapter 8, “Criminal justice processes and the Internet” by Clive Walker.

¹ See also Walker, C., and Akdeniz, Y., “The governance of the Internet in Europe with special reference to illegal and harmful content” in Walker, C. (ed.), *Crime, Criminal Justice and the Internet* (Special edition, Criminal Law Review, Sweet & Maxwell, London, 1998); Kelleher, D., and Murray, K., *IT Law in the European Union* (Sweet & Maxwell, London, 1999).

² Liberty (ed.), *Liberating Cyberspace* (Pluto Press, London, 1999) p.141. See European Commission, *A European Initiative in Electronic Commerce* (COM(97) 157).

³ See Christian, C., *Legal Practice in the Digital Age* (Bowerdean, London, 1998) p.6.

In the final Part IV (“Legal controversies in cyberspace”), the various authors seek to address specific issues in the light of some of the themes and approaches, such as governance, already described.⁴ This point is especially true of the headline-grabbing issue of pornography delivered via the Internet – tackled in Chapter 9, “Obscene and Indecent Speech” by Yaman Akdeniz and Nadine Strossen, and also Chapter 10, “Child pornography” by Yaman Akdeniz. Until the 1990s there were no specific restrictions on Internet content and usage. Governments did not concern themselves, because Internet access was confined to a relatively small community of academics at universities, government research institutions, and commercial research institutions. However, once the general public gained admittance in the mid-1990s, the earlier debates over Internet content were fuelled by the “moral panic” over pornography,⁵ and so it seems appropriate to start here. The subject of Chapter 11, “Hate speech” by Barry Steinhardt, has been less prominent in UK Internet debates, so it is very pertinent to see what precedents might flow from the USA. The agenda is certainly developing in the UK. In September 1998, the Home Secretary condemned Holocaust denial and racial abuse on the Internet in a speech also dealing with terrorism,⁶ and a wide array of political violence (including some forms of racism) can now be labeled as “terrorism” under the Terrorism Act 2000. There have been calls for a policy response in the form of a code of practice,⁷ and the Internet Watch Foundation responded in early 2000 to pressures by the DTI and Home Office to extend their remit to racist materials. As indicated in these chapter the Internet involves risk – being an open environment allows for abuse and some would picture the threat of folk-devils, such as hackers and denial of service attackers, as giving rise to a state of siege or even information warfare.⁸ The concerns are unbounded and reflexive in a risk society in that the more society comes to rely on information technology as part of the political economy, the more likely it is that forms of abuse will come to be seen as political as

⁴ See further Akdeniz, Y., “Governance of Pornography and Child Pornography on the Global Internet: A Multi-Layered Approach,” in eds Edwards, L., and Waelde, C., *Law and the Internet: Regulating Cyberspace*, Hart Publishing, 1997.

⁵ See Elmer-Dewitt, P., “On a screen near you: Cyberporn” *Time*, 3 July 1995; Wallace, J., & Mangan, M., *Sex, Laws, and Cyberspace: Freedom and Censorship on the Frontiers of the Online Revolution*, (New York: Henry Holt & Company, 1996).

⁶ “We must defeat racism and terrorism says Home Secretary”, (356/9, 14 September 1998, <<http://www.coi.gov.uk/coi/depts/GHO/coi5696e.ok>>).

⁷ Liberty (ed.), *Liberating Cyberspace* (Pluto Press, London, 1999) chap.13. See further, Brophy, P., Craven, J, and Fisher, S., *Extremism and the Internet* (CERLIM, Manchester, 1998).

⁸ See Bainbridge, D., *Introduction to Computer Law* (3rd ed., Pitman, London, 1996) Pt.3; Denning, D.E. and Denning, P.J., (eds.) *Internet Besieged* (ACM Press, New York, 1998); Denning, D.E. *Information Warfare and Security* (ACM Press, New York, 1999).

well as criminal.⁹ The long-established criminal of the computer world is the hacker – around since the advent of personal computers and therefore pre-dating the Internet by some years. An update and application of the legal position is provided in Chapter 12, “Hacking, viruses and fraud” by Martin Wasik. Turning from criminal to civil anti-social behaviour, Chapter 13 by Horton Rogers and Yaman Akdeniz covers “Defamation on the Internet”.

From this point the book moves more positively towards the implications of e-commerce, though it must be realised that the rapid commercial development of the internet is also acting as a formidable regulator, and therefore overlaps with issues in the previous parts. For example, it is ironic that many of the e-commerce technologies and practices have been developed in connection with gambling and sexually explicit sites. The irony lies in the fact that whilst these activities generated regulatory concerns, they nevertheless contributed to the development of Internet technology, particularly e-commerce. The owners of gambling and sexually explicit sites,¹⁰ particularly the latter, have, in order to protect their markets, have restricted free supply and eliminated competition, thus greatly reducing the amount of "first click" materials on display and the more extreme forms of pornography. As indicated earlier, moving away from the libertarian and communitarian philosophy which dominated on the Internet for its early life, a second age is now upon us. That age is the age of business, and it may safely be predicted that commercial pressures will continue to drive the Internet into the hands of “e-commerce”:¹¹

“Electronic commerce refers generally to all forms of commercial transactions involving both organisations and individuals, that are based upon the electronic processing and transmission of data, including text, sound and visual images. It also refers to the effects that the electronic exchange of commercial information may have on the institutions and processes that support and govern commercial activities.”

A bridge is provided by Yaman Akdeniz and Clive Walker in Chapter 14, “Whisper who dares: encryption, privacy rights and the new world disorder”, which emphasises the public interest in private communications as well as examines the policing concerns which

⁹ See further Walker, C., (ed.), *Crime, Criminal Justice and the Internet* (Sweet & Maxwell, London, 1998).

¹⁰ See generally Akdeniz, Y., *Sex on the Net? The Dilemma of Policing Cyberspace*, (South Street Press, Reading, 1999).

are engendered by their use. Finally, the remaining wide-ranging issues surrounding e-commerce are covered by Chapter 15, "Electronic commerce" by Paul Eden. The commercial uses of the Internet have several implications for law¹² and society. Amongst the legal impacts are those relating to the formation and authentication of contracts,¹³ copyright protection, consumer and data protection, and tax implications. The issues have been recognised both at national UK level and also by the European Union.¹⁴

Altogether, this book reflects the strong academic and professional networks which have been organised in the Department of Law at the University of Leeds around the Centre for Criminal Justice Studies and the newly formed CyberLaw Research Unit. Through this site, we have actioned and discussed Internet-related agendas for nearly ten years, and we have met other academics and professionals involved in Internet governance throughout the world. Our research and that of the authors of this book is on-going and thus represents a snapshot of work on the subject. One can be sure only that Internet development will be rapid and innovative and that new socio-legal issues will emerge in the wake of that development. Despite the changing environment, we have attempted to incorporate commentary on events up to 1 January 2000 and in some cases (mindful especially of current legislation) we felt it necessary to go beyond even this deadline and have assumed that it will be passed into law in the near future. We hope that later developments can be highlighted for the benefit of readers through materials and links at the following web site:

< <http://www.booksites.net/akdeniz/> >

At the same time, we acknowledge that web links cited within the book will quickly become dated, though readers are advised that the root address may still contain useful sources.

¹¹ OECD, *Opportunities and Challenges for Government* (the "Sacher Report") <http://www.oecd.org/dsti/sti/it/ec/prod/sacher_e.pdf, 1997>, p.20.

¹² See Bainbridge, D., *Introduction to Computer Law* (3rd ed., Pitman, London, 1996) Pt.2; Gringras, C. (ed.), *The Laws of the Internet* (Butterworths, London, 1997); Chissick, M., and Kelman, A., *Electronic Commerce* (Sweet & Maxwell, London, 1999); Saxby, S., (ed.), *Encyclopaedia of Information Technology Law* (Sweet & Maxwell, London, 1990-99) chap.3; Singleton, S., *Business, the Internet and the Law* (Tolley's, Croyden, 1999); Rowe, H. (ed.), *A Practitioner's Guide to the Regulation of the Internet* (City & Financial Publishing, Old Woking, 1999); *New Zealand Law Commission, Report 50: Electronic Commerce Part One: guide for the legal and business community* (NZLC R50, Wellington, 1998).

¹³ As to what counted as "documents", "signatures" and "writing" before the Electronic Communications Act 2000, see Reed, C., *Digital Information Law* (Centre for Commercial Law Studies, London, 1996).

¹⁴ See Kelleher, D., and Murray, K., *IT Law in the European Union* (Sweet & Maxwell, London, 1999); Dickie, J., *Internet and Electronic Commerce in the European Union* (Hart Publishing, Oxford, 1999).

It remains for us to thank the authors of the chapters for persevering with their subjects as the book took shape and also to thank the publishers (especially Pat Bond) for having faith that a manuscript would indeed materialise one day from Cyberspace.

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