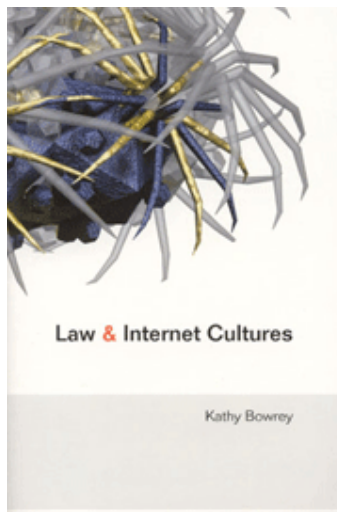


Book Reviews

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Kathy Bowrey.
Law & Internet Cultures.
Cambridge: Cambridge University Press, 2005.
paper, 241 p., ISBN 0-521-60048-0, US\$21.99.
Cambridge University Press:
<http://www.cambridge.org/us/>



What role does Australia play in debates over the regulation and governance of the Internet? Is it a hub? A node in the information grid? Or is it a mere cul-de-sac? Or are we mere road-kill, bush junk, on the information autobahn?

Arguably, Australia has played an important role in how we think about cyberspace. Our courts have handed down landmark decisions on Internet jurisdiction, and peer-to-peer networks. Australia has world-class anti-spamming laws. We are also the unwitting recipients of U.S. law and culture, having recently acceded to the *Australia-United States Free Trade Agreement*. Australia has also helped define how we imagine cyberspace. The dystopian thriller *The Matrix* was shot in Sydney — with the Australian actor Hugo Weaving putting in a chilling performance as Agent Smith, the relentless hunter of the hacker Neo. The prequels of

Star Wars were also filmed in Sydney, with their piquant fears about technology, cyborgs, and clones. Australia has also produced some of the finest philosophers of the Internet. Think, for instance, of Margaret Wertheim's *The pearly gates of cyberspace: A history of space from Dante to the Internet* (Sydney: Doubleday, 1999).

A new book, *Law & Internet Cultures*, provides a highly original and creative perspective on cyberspace law, with a distinctive Australian vision. The author, Dr. Kathy Bowrey, is a legal scholar, with a background in art, history, and technology. She is an associate professor at the School of Law at the University of New South Wales, a director of the Communications Law Centre and a Research Associate of the Baker & McKenzie Cyberspace Law and Policy Centre.

In her book on Internet governance, Bowrey seeks to examine the intersections between law, technology, and culture. She pays particular attention to the stories, narratives, and rumours told about the Internet: "In understanding why the current state is one of conflict, we should not dismiss studying the place of storytelling — then and now." Bowrey comments upon the Babel of collective identities in cyberspace:

"There are many Internet cultures, made up by many different kinds of storytellers, all trying to maintain their own voice and identity. In the current, more subdued mood, internet communities are fighting to keep their cultures alive amongst fears that they are bound to be swamped — by bad code, bad businesses, bad practices, bad organisations, bad laws, bad courts and bad governments."

Bowrey explores the crash in the tech market, the rampant monopoly of Microsoft, the trademarking of Linux, the fetish of iPods, and the privateers of the information age, peer-to-peer networks. She weaves together legal developments, a critique of the hyperbole of the dot.com boom, and stories and narratives from the information age.

In Chapter 1, Bowrey charts the shifting and diffuse field of Internet law. She considers how national parliaments and courts seek to regulate global information flows. Bowrey considers the

groundbreaking case of 2002 *Dow Jones & Co Inc v Gutnick* on Internet defamation and jurisdiction heard in the High Court of Australia. A Melbourne businessman, Joe Gutnick, brought a defamation action in his home state of Victoria over an article published on *Barron's Online* by Dow Jones, which is based in New York. The High Court took an expansive view of jurisdiction, and held that Gutnick could indeed take action in the Supreme Court of Victoria. They were disinclined to accept arguments that the Internet was a unique medium:

“In the course of argument much emphasis was given to the fact that the advent of the World Wide Web is a considerable technological advance. So it is. But the problem of widely disseminated communications is much older than the Internet and the World Wide Web. The law has had to grapple with such cases ever since newspapers and magazines came to be distributed to large numbers of people over wide geographic areas. Radio and television presented the same kind of problem as was presented by widespread dissemination of printed material, although international transmission of material was made easier by the advent of electronic means of communication.”

This decision in the Gutnick case will undoubtedly guide the courts in matters of jurisdiction involving the Internet in the future. The judiciary will be confident in asserting jurisdiction over online matters, so long as the harm is experienced locally and the party had knowledge that the harm was a likely consequence of their actions.

In Chapter 2, Bowrey pensively recalls the “irrational exuberance” over technology markets, which resulted in the bursting of the dot.com bubble. She observes: “Extraordinary claims about expansive new horizons were taken seriously by e-commerce explorers, their backers and the broader public, only to be later followed by revisionist denunciations of the collective stupidity associated with believing in such tales, and attempts to allocate blame for the unwarranted circulation of such ridiculous fictions.” Bowrey tells the salutary story of Pets.com, a virtual pet store, an Internet menagerie if

you will. This company was founded by an entrepreneur who had registered hundreds of Internet addresses; it raised more than \$US100 million in venture capital; and then collapsed in the crash of technology stocks in November 2000, after its shares were rendered nugatory.

In Chapter 3, Bowrey considers the battles waged over the governance over the Internet. In 1998, the U.S. Commerce Department set up the Internet Corporation for Assigned Names and Numbers (ICANN) to manage the ownership of domain names. The organisation developed a uniform dispute resolution policy to deal with cyber-squatting. There has been much debate about the jurisdiction and governance of ICANN. Bowrey observes that the power to make decisions about Internet architecture was significant to “the development of the global economy, for maintaining the power of nation states and a continuing role for associated bureaucracies and courts in relation to that economy.” There has been much criticism that Internet governance is dominated by the U.S. from international organisations, governments and civil society organisations such as ICANNwatch. The United Nations has argued that there should be a multinational approach to Internet governance, which is democratic and transparent. The European Union has been formulating an agreement to allow governments to have more direct influence over the domain name system. At the World Summit on the Information Society, the Working Group on Internet Governance (see <http://www.wgig.org/>) provided a framework for discussions about future Internet governance.

Bowrey also looks at the role of the Internet Engineering Task Force (IETF). She argues that the body fails to consider the impact of information technology patents on standard setting. Bowrey contends:

“Currently the IETF lacks the ability to assert a leadership role as a producer of legal knowledge about intellectual property rights and Internet architecture. This is unfortunate because the IETF is capable of significantly and directly impacting on the import of the patent activity of the state, which is threatened by the global context of Internet standard setting.”

Bowrey argues that if the IETF were to enforce a royalty free–mandate that would help change the character of the organisation and its membership, and, over time, promote an open architecture for the Internet.

In Chapter 4, Bowrey considers the development of free software, open source software, and the Creative Commons movement. She wonders: “Is this a revolutionary movement or just another reinvention of stagnating capitalist relations?” The Free Software movement developed the General Public Licence to ensure that the computer code remained in the public domain, and was not commodified. Bowrey explores the cult of personality that has grown around Richard Stallman, the eccentric and dogmatic standard–bearer of the movement. The Open Source movement relies upon contract law to ensure that the programmer can access source code, which is human–readable. However, the movement has been open to commercial relationships — for instance, through the provision of services under a company like Red Hat. Bowrey considers the ironies of the open source developer Linux Torvalds seeking a registered trademark in respect of Linux. She cites with approval the comment of a journalist that “Torvalds is less a ruler (or a hood ornament, for that matter) than an ambassador, roaming his virtual world and exerting his influence to prevent technical fights from devolving into sectarian battles.”

Later in the book, Bowrey considers the phenomenon of the Creative Commons movement which arose out of a concern for the erosion of fair use rights in contemporary copyright law. Through the use of innovative licensing, the Creative Commons seeks to encourage creators to put copyright work into the public domain, and free access to literature, music, film, and images. Bowrey observes: “The ‘civility’ of the commons is that of the respectable property holder, graciously consenting to specified free or less restrictive uses, so long as the prescribed notice stays attached.” Most notably, the BBC has relied upon Creative Commons licences to enable the public to access its archives of radio and television broadcasts. Bowrey suggests that the Creative Commons movement has much to contribute to popular culture. However, she wonders whether such a mechanism will do much to redress the poverty of artists.

In Chapter 5, Bowrey considers the promethean inventor Bill Gates, and the leviathan, Microsoft. She

reflects upon the hate and loathing inspired by the computer programmer and his company in some communities: “Few corporations are the subject of popular debate, suspicion and derision in the way that Microsoft is.” Bowrey examines the anti-trust actions and competition law cases brought against Microsoft in the U.S. and the European Union. She questions the assumption that the law struggles to respond to anti-competitive conduct because of the unusually rapid pace of innovation. Finding such analysis to be narrow and limited, Bowrey calls for a broader analysis of the company: “What Microsoft typifies is a broader way of thinking about the information economy, about technology markets, and innovation.” She moves on to consider other aspects of the company’s operations — its philosophy, its organisational culture, and its dispersal and out-sourcing of employees.

Chapter 6 has the heading “Telling Tales: Digital Piracy and the Law.” Bowrey considers the copyright litigation by content owners against successive generations of peer-to-peer networks — such as Napster, Kazaa, and Grokster. She observes: “Perhaps we should think of peer-to-peer devotees not as buccaneers, but as privateers — the patriots of the information age.” Bowrey seeks to explain the fetish of new consumer electronics toys — such as the Apple MP3 player, the iPod:

“Part of the attraction of the iPod is that it is both a well integrated device that makes it easy to use and to share music, as well as fitting our expectations of a small, infinitely portable, wearable gadget. Whilst it is currently a very desirable commodity, given the fluidity of these identities we construct within a perpetual innovation cycle, there is an ongoing need for us to reinvest in new purchases, to refresh our identities and aesthetic experiences, in response to the new trends. As experienced, affluent consumers we know the game element of this. We understand the functional obsolescence of the technologies and the disposability of the associated signs and devices.”

This chapter also investigates the use of technological protection measures and digital rights management

systems by record companies, film studios, and software makers. It also explores the increasing vertical integration of communications and content networks.

In Chapter 7, “Participate/Comply/Resist,” Bowrey charts the collaboration of nation–states with the global wealth creation strategies of big business. She observes that globalisation of information and communication technologies has been a source of hegemonic power: “It is a central instrument of expression, a ways and means, of a new distributed form of global power.” Bowrey considers the capacity of global civil activism in impacting upon Internet law and politics. She questions whether it is possible for cyberactivists, culture–jammers and hactivists to change the course of the information society. Bowrey comments:

“We do need new rights and more resistance to the narrow, economic ambitions of corporations and the nation state. However as part of this struggle we need to work with the political potential of *all* the new legal practices... . Participate/consult/resist, a combination of strategies is required to combat this new globally distributed power.”

Bowrey argues that there is a need for collaboration between developing countries and civil society to influence both domestic and international U.S. policy. She observes that “support that strengthens the profile and role of select U.S. civil society groups globally can contribute to the moderation of some of the more objectionable policies advocated by the U.S. government.”

This book *Law & Internet Cultures* provides an important antidote to the many anodyne generic texts on information technology law. It is a feisty, sceptical, and independently–minded text, full of passion and spirit. The book is a concise, modular piece of work. It is a selective critical analysis; it does not profess to be a comprehensive overview of case law, legislation, and treaties. It is sometimes a theoretically challenging book to read. Occasionally the meaning of the stories told in the book remains somewhat opaque. Sometimes the theoretical concepts are too abstracted from the phenomena that they seek to explain. The ongoing discussion over the regulation of the Internet tends to be dominated by highly visible U.S. pundits, personalities,

and commentators. There is a need for new voices to be heard in this ongoing conversation, which bring different cultural perspectives and unique insights. The book *Law & Internet Cultures* offers a fresh Antipodean view of the debates over the governance of the Internet, and the control of intellectual property. — Matthew Rimmer, Faculty of Law, Australian National University 