

BOOK REVIEW

THE LAW OF ELECTRONIC COMMERCE

Alan Davidson

Cambridge: CUP, 2009, 399 pp, £30, ISBN-978-0-521-67865-0 (pbk)

Alan Davidson's *The Law of Electronic Commerce* is an interesting work that went on the market in 2009, when there were already many works on the same topic. The book is divided into nineteen chapters.

Chapter one is an introduction to the law of electronic commerce and the most common definitions within this realm. The author then offers an overview of Internet use in Australia and its judicial consideration.

Chapter two offers a panorama of the current regulatory issues surrounding the rules of cyberspace. The author examines the juxtaposition of culture and cyberspace by discussing the cultural and environmental implications of cyberspace. The rule of law, which "ordains that all people come before the law equally" (p. 17), is compared to the rule of cyberspace that order is being developed from chaos. After quoting Lessig's vision of cyberspace, the author concludes that the cyberspace rule is "both the juxtaposition of hardware and structure with verisimilitude and human behaviour within the cyberspace environment" (p. 24).

Chapter three delves into deeper waters by looking at electronic commerce and the law of contract. The UNCITRAL *Model Law of Electronic Commerce* (herein, "*Model Law*") is examined together with the provisions adopted in Australia and New Zealand. The chapter deals with the validity of electronic contracts and transactions under common law. Themes such as how signatures and the production of documents enhance the value of consent in cyberspace are also considered; in this regard the US approach is also taken into consideration. General requirements pertaining to the law of contracts – such as the time and place of dispatch of electronic communications and their attribution - are then analysed deeply.

The following four chapters offer a full overview of shrinkwrap, clickwrap and browsewrap contracts. The author considers primarily US cases, arguing that they provide good guidance, while underlining that in Australia and New Zealand an approach is still to be determined. He digs deeply into the regulation of signatures in cyberspace and – after a general explanation of traditional signatures – examines all the modern patterns of electronic signing, providing a definition as well as sub-definitions including the digital signature and the digitised signature. He then examines the copyright issues involved in electronic commerce, first providing a general definition of the right, before analysing more closely various issues such as the relationship between copyright and software; enforcement measures; time-shifting; format-shifting; and space-shifting. Peer-to-peer file-sharing is also dealt with by commenting on some landmark US decisions. He then covers the interrelation between electronic commerce and patents, trademarks and circuit layouts. After a general overview, the author touches upon issues like trademark infringement through

hyperlinking, framing and the use of meta-tags. He gives an international overview of the importance and admissibility of patents in cyberspace through a comparison of the European and US experiences. Circuit layouts and their protection are also examined at the national and international levels.

Chapters Eight, Nine and Ten open the door to domain names. They analyse the nature of domain names as business identifiers and examine various types from top-level domain names to the generic and country code ones. The most interesting feature of the chapter is the explanation of the nexus requirement in most common law countries. He goes on to consider disputes regarding domain names, and in dealing with legal remedies enlists experiences in the US and at the international level. Passing-off is then commented on, and some leading US decisions, and the Australian experience and provisions, are reported. The author eventually deals with uniform dispute resolution processes in the realm of domain names. The WIPO practice is laid out, and the ICANN process explained, with reference to the requirements that must be met in order to resort to these kinds of procedures. The chapter ends by taking a look at country code dispute resolution systems in Australia and other major common law jurisdictions.

The next three chapters deal with themes related to the cyberspace. Davidson deals with the contentious issue of jurisdiction in the cyberspace and the borderless nature of the Internet. The applicable principles of international law, such as *forum non conveniens* and *lex loci*, are mentioned together with some US cases. The author concludes by stating that mere accessibility of a website should be insufficient to justify jurisdiction and that issues like the location of the recipient, computer and server are complicating factors in electronic communications. He then examines the highly disputed issue of defamation in cyberspace. While recognising that decisions in this area are still in their infancy, the author asserts that some major principles are already ascertainable: for example, forum providers should not provide no control whatsoever and state it widely, and that employers should implement systems able to prevent employees from putting the firm into a dangerous position. Privacy and data protection in cyberspace are also analysed. The author considers the different conflicting forces of freedom of information and speech and their regulation. Australia is the main focus in this discussion. Privacy issues around web cookies and bugs are also considered by providing a thorough explanation of their nature.

In the last part of the book, the author deals with e-mailing and features like attachments, authentication, viruses and the value of disclaimers. He examines general online presence and issues like the liability for online materials, the nature of newsgroups and mailing lists and the different procedures adopted while dealing with professional electronic communications. He also addresses issues concerning national electronic surveillance, explaining the US *Patriot Act* and the Australian legislative provisions, together with a list of international conventions that have been incorporated into Australian law. The author also points out that the *Commonwealth Criminal Code*, a leading example of such provisions, now contemplates several examples of cybercrime. Acts such as child pornography, spamming, cyber-stalking, and phishing are also covered at the national and international levels.

Davidson's work also covers the evidentiary value of electronic documents. He discusses national provisions in some detail, and reports the value assigned to electronic documents by the *Model Law*; he also addresses the evidentiary value of hard copies of electronic records. Lastly, he provides a clear picture of the highly

disputed issues of censorship and content regulation, dealing with the Australian Communications and Media Authority, which regulates Internet, television and radio communications, and providing additional insight into US and EU regulation.

The last chapter of the book offers an international perspective by highlighting decisions and models created by international organisations and their value in shaping the Internet since its early days. For instance, the *Model Law* provided an outstanding example of valuable regulation in more than one hundred jurisdictions. Some of the major international organisations and their contributions in the regulation of the Internet are reported with useful references.

Overall, this book is a very good attempt at clearing up some doubts as to the nature and value of electronic commerce for those who already have some knowledge on the subject. It is also an excellent tool for the education of legal professionals in the field of electronic commerce and related issues, especially in Australia. Even though the major focus is on Australia and its jurisdictions, useful references are made to cases from the US and the EU as well. The author has succeeded in offering his readers a general overview of the regulatory framework and legal theories surrounding the field of electronic commerce, and his work is an excellent resource for civil lawyers who wish to learn more about the law of electronic commerce in common law jurisdictions.

Luca Escoffier

Visiting Lecturer, University of Washington School of Law; TTLF Fellow, Stanford University; PhD candidate, Queen Mary, University of London.

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