

Future Codes: Essays in Advanced Computer Technology and the Law

Written By Curtis E.A. Karnow

Reviewed By David F. Segadelli

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Future Codes remains very insightful, even six years or more removed from the realities around which it was first printed. The author is a former federal prosecutor and now a law partner in San Francisco. He discusses in varying detail many of the complexities facing the legal community in coping with the realities of the digital world, especially the fact that overnight innovations can change the assumptions underlying legal principles. Published in 1997, *Future Codes* is a series of essays that provides the reader with the author's view on the development of technology and its influence on the legal world.

The author's broad topical familiarity with the law and digital technology is quickly evident. Although a short read, *Future Codes* touches many legal areas and provides a glimpse into what was, and still is, the developing relationship between the digital world and the law. Though at times difficult to follow because of the scope and technical terminology, the central theme is that our present legal framework is ill suited to keep pace with the blazing advances of a boundary-less medium.

Future Codes addresses whether the Internet is ripe for regulation or whether the industry will correct itself. The novelty of industry frustrates attempts to regulate the digital world because it continually creates new realities, such as the artificial intelligence and the virtual world, that the traditional legal system is not accustomed. These, and similar technological developments alter some of the basic assumptions upon which our legal system is premised. One proposal advocates judicial restraint, allowing the industry to develop consensus as to the industry standards to serve as the basis for the assumptions

that will shape the law. For example, the definitions of a legal entity, reasonableness and community standards are ill equipped to virtual world application. As computers, capable of lightening-fast complex calculations, continue to replace the functions of people, they are still incapable of the basic human understanding of common sense. Thus, it would be difficult to apply a concept of reasonableness premised on human conduct to that of artificial intelligence. As courts try to stretch traditional legal concepts to cover the realities of high technology, their reasoning thins and weakens.

Some parts of *Future Codes* are particularly technical, posing difficulty for a layperson to understand the complexities of a virtual world. *Future Codes* describes a technologically complex environment where distinctions between human and artificial intelligence and between maker and machinery dissipate, then disappear. Inevitably raising the issue of who is legally responsible for certain conduct. Unfortunately, my first year Torts class did not delve into these types of scenarios.

The digital world also raises jurisdictional issues that are daunting to reconcile with reasoning based upon the traditional understanding of a world measured by borders. The author explains that many sovereign states' borders can be crossed in a flash, yet whether jurisdiction will be found remains at times a very complex and highly unpredictable question. As the scope of jurisdictional reach is broadened, the decision to pursue particular opportunities will be subject to increased fears of potential litigation.

Future Codes does not advocate treating cyberspace as a unique place. Rather it seems to posit that the digital world does not present any novel legal issues that are outside the legal system's scope, even though some scholars and courts may have a different view. *Future Codes* points out that some analogies from the physical world

work well in the digital world, namely the comparison of email to mail and a hard drive to a filing cabinet. In addition, the contributions of trademark, copyright, patent and trade secret law nurtured the large-scale economic development of high-tech law, by affording protection to intellectual property rights. *Future Codes*, however, cautions against over protection mentioning this as a potential impediment to continued growth.

Although advocating some civil law to cyberspace, *Future Codes* does not give the same blessing to the application of criminal law to the digital world. Criminal implications of conduct can vary from state to state. What is illegal in Tennessee might be legal in California. Further, it is futile to rely upon physical laws to criminalize activity in a digital world that disregards the laws of physics. *Future Codes* places more faith in the market and private law, then in public law's ability to regulate high technology. Supports the author's proposition is the mammoth task confronting any government or organization to regulate nearly limitless interaction in cyberspace between people form all over the world.

Computer technology is here to stay, and part of the digital world's appeal is its potential for unmatched access to information. This notion, however, is being eroded by the cost of litigation. The author argues that the continued development of the digital world requires a change in the court system. In particular, he cites the rate of technological advancement compared with a legal system that remains in a morass of chaos. The inability to resolve physical challenges let alone digital realities will further frustrate the courts inability to catch up.

Also, for litigants trying to preserve a competitive edge in a fast moving industry, waiting a decade for vindication is simply too long. Relying upon a court system already

mired in delays, beset with political struggles and poorly funded to administer justice will cause some parties to needlessly wither while others flourish. This creates an advantage for those with deeper pockets who can afford to wait out a ruling, thereby reducing competition and allowing larger companies to dominate.

Though valuable as a source of citation, *Future Codes* is perhaps more beneficial as a starting point for research, especially for those unfamiliar with the impact of high technology upon the legal systems. *Future Codes* provides an introduction to a host of legal areas implicated by high technology, discusses the effects of intermingling law and technology, and makes predictions about the future of the industry and the path of the law. High technology is an exciting and developing field, and unlike well-established areas of the law, the evolving realities of the digital world continue to challenge the judicial system.

What *Future Codes* makes clear is that there are a lot of highly intelligent people developing the technological advances of tomorrow. Also, it is apparent that digital technology advances of modern society have and continue to affect the legal system. Those planning to confront these issues on a daily basis need a keen understanding of the technology involved and an ability to predict its impact on the law. Reading *Future Codes* is a good place to start.