

Law & Internet Cultures

By Kathy Bowrey

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In the 1970's when a few technologists and academics defined network protocols to facilitate sharing electronic data, they could not have imagined that today's internet would be the result.¹ Their desire to openly share bits and bytes has evolved into the information sharing culture of the modern internet, and their conscious avoidance of strict access control regulations has become the thorn of lawmakers across the world.² The interplay between offline laws controlling privacy, intellectual property rights, free market forces and the desire for a vibrant internet culture is the topic undertaken by Kathy Bowrey in her book *Law & Internet Cultures*.³ Presented from the perspective of a technologist, a politician, a sociologist, an activist and an international citizen, this book considers the myriad of actors in the development of internet culture, the stifling effect of applying existing laws and standards to the technological development of the best possible internet, the cross-border dominance of U.S. laws, and the role corporate personalities and compromises have played in the adoption of technology.

The thesis presented is that within the internet context one can not study any law, technology decision, consumer preference, or market reaction individually. Instead, each facet of internet culture must be evaluated against the historical context of technology decisions,

¹ Barry M. Leiner, et al., *A Brief History of the Internet*, Internet Society, at <http://www.isoc.org/internet/history/brief.shtml> (last modified Dec 10, 2003) (describing how what was envisioned by a dedicated band of researchers as a galactic network "has grown to [become] a commercial success with billions of dollars of annual investment.")

² KATHY BOWREY, *LAW & INTERNET CULTURES* 2 (2005).

³ Kathy Bowrey is on the law faculty at the University of New South Wales, Australia. She has written extensively on the effects of copyright on culture, cyberlaw, and intellectual property. For a list of her past publications see <http://www.chickenfish.cc/copy/> (last visited September 30, 2006). BOWREY, *supra* note 2.

industry battles, economic forces, and global policy considerations. Only by understanding the broader interplay between each of these forces can the “mechanics of the law/technology interface” be understood.⁴ Relying heavily on metaphors and stories to highlight the nuanced touch points between a modern technological reality and the origins of that reality the author threads her tale of cultural development from early internet specification documents⁵ through the effect of propaganda emails on the conflict in Iraq, to recent U.S. court copyright decisions such as *Sony* and *Grokster*.⁶ For example the pop-culture movie *The Matrix* is used to present the alienation of community caused by the internet. In the movie “technology is presented as a potent force, dangerous in its capacity to control – always moving actively at the edges beyond us and potentially in opposition to us.” just as the internet is criticized as causing the loss of real connections between people.⁷ Presented over seven chapters, the topics addressed include the development of laws affecting the internet; the global characteristics of the internet community and the culture of the technologists who developed the internet; the effects and weaknesses of standards bodies on innovation and technology adoption; the motivations behind open source, public licenses, and free software; the personality and dominating market force of Microsoft and Bill Gates; the widespread consumer adoption of digital music piracy as contrasted with the intellectual property rights of the content creators; and lastly, the opportunities for cyber activism and global law making.

To consider the role law plays in shaping internet culture and the global community, the author insists that one must understand the motivation of the internet’s creators. The internet

⁴ BOWREY, *supra* note 2, at 21.

⁵ These documents were called RFCs (Requests For Comments) demonstrating that the nets creators were truly looking to collaborate on the best solution rather than impose their will on the eventual solution. BOWREY, *supra* note 2, at 2.

⁶ *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd.*, 380 F.3d 1154 (9th Cir 2004). This book was published prior to the Supreme Courts reversal published at 545 U.S. 913 (2005).

⁷ BOWREY, *supra* note 2, at 43.

evolved out of a research community whose primary goal was facilitating the open exchange of knowledge.⁸ Initial protocols were developed not to enforce privacy or security but instead to establish a minimum framework for reliable message delivery. By complying with these minimum protocol standards a new “node”, or user, could easily connect to the network and begin contributing knowledge towards the greater community. Fast-forward thirty years and this single internet now bears the burden of being all things for all people.⁹ This imposes the burden of mandatory interdependence on the global internet community, a requirement seemingly absent within traditional communities. Many of the features of a traditional community (including the right to privacy, the ability to compete and collaborating over ideas, and the ownership of knowledge) were intentionally absent in early internet communities and accordingly have become a source of conflict in the online paradigm.

The internet’s creators were not undertaking the creation of the “perfect internet.”¹⁰ Instead they worked to get communication channels up and running and left the problems of technology choices, standards bodies, and law making to those who followed.¹¹ These obligations initially fell upon The Internet Engineering Task Force. Created in 1986, this standards body had a mandate to control the plumbing of the internet but not the people. As this group struggled to control the personalities within the debate an enduring problem of technological development surfaced. How does a group make technology choices for the growth of the internet when it is unclear what the internet will be? Similarly, should standards be imposed which favor freely available technology over “better” but more costly technologies?

⁸ Leiner, *supra* note 1.

⁹ Each of the following community types has shaped internet culture with their contrasting goals, pull and needs: corporate, public, open, closed, educational, legal, scientific, artistic, social, peer to peer, hacktivist and activist. BOWREY, *supra* note 2, at 15

¹⁰ See J. Reynolds, J. Postel, *RFC 1000 The Request for Comments Guide*, August 1987, at <http://www.rfc-archive.org/getrfc.php?rfc=1000> (last visited Oct 1, 2006).

¹¹ *Id.*

And lastly, how can laws protect existing rights while not stifling innovation? While taskforces and user groups attempted to resolve these struggles, the internet and its current culture continued to develop apart from these bodies. From these humble beginnings existing laws have continually struggled to catch up to what technology has already made a reality.¹²

The author writes that “law creates and denies the possibilities of community. It sets standards and many of the communication rules. But law is not an omnipotent or singular force.”¹³ Apart from the law the author highlights other shaping forces, namely the dominance of the U.S. market on the global internet, the effect of open source software licensing models, and the corporate personalities of market leaders such as Microsoft. Once content appears on the internet it becomes accessible internationally, causing any nation’s domestic corporations to become subject to a foreign law.¹⁴ International courts have cautioned that this leads to U.S. laws being in force beyond their territorial boundaries.¹⁵ The sheer economic power and dominance of U.S. companies can therefore affect the rights of international citizens and the overall internet culture.

To demonstrate the effect internet culture has had on the public, the author considers how widespread downloading digital content has become. She examines whether these music pirates are really the patriots of the information age, working to balance the public’s right to content with the producers right to profit. Downloaders demonstrate that the public thinks about the ownership of content very differently than lawyers do. In reality, consumers who feel they are doing nothing wrong are unlikely to be satisfied with less access than they have now (the ability

¹² Consider laws such as the Digital Millennium Copyright Act enacted in an attempt to restore protection for existing rights of copyright owners. Pub. L. No. 105-304, 112 Stat. 2860 (1998).

¹³ BOWREY, *supra* note 2, at 199.

¹⁴ A notable exception are countries that censor information access, such as China. See generally *No News Allowed*, N.Y. TIMES, July 4, 2006, at A14.

¹⁵ See e.g. *Dow Jones & Co. v. Gutnick*, (2002) 194 ALR 433 (Austl); *Yahoo, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 169 F. Supp. 2d 1181 (N.D. Ca. 2001) (citing a French injunction against content on a Yahoo auction site).

to download content freely). The law (and music industry) assume that once educated, consumers will comply with existing copyright laws, but in reality existing cultures are slow to conform, especially if it means giving up perceived rights.¹⁶

Contrasting the Microsoft economic model with an open source model (as used in the development of Linux) demonstrates another force at play within internet culture and highlights the challenges of control within the internet. Microsoft's market dominance derives from owning the property rights to their technology. Open source thrives off of no one owning or profiting from the implementation. While Microsoft relies on their market dominance to force technology users into Microsoft-centric solutions, open source licensing approaches technology adoption from the opposite direction.¹⁷ Rather than undertaking development for profit, the open source model strives to allow the "best" technology to win out by being adopted and built upon by other developers. The struggle between these two methodologies has allowed internet culture to fragment further as it forces users to choose between the two rather than being able to use the best of both.

One of the most novel legal issues addressed by the author is the fundamental incompatibility of the modern IP concepts of information ownership and the open source development model.¹⁸ Open source relies on a trust relationship among contributors in which there is no "owner" of an innovative concept. IP protection is motivated by a for-profit model

¹⁶ Bowrey writes that the myth of law is that respect for law will make information from the public forthcoming. BOWREY, *supra* note 2, at 127.

¹⁷ For a given need Microsoft may not have the best technology available but the existing wide adoption of Microsoft's products discourages competitors from developing better technological alternatives. End users become locked into upgrades to remain compatible with other companies and Microsoft's dominance becomes further entrenched. In this way the dominance of Internet Explorer has shaped how users interact with the internet and in turn affected the culture of the internet. BOWREY, *supra* note 2, at 112.

¹⁸ BOWREY, *supra* note 2, at 96.

absent within open source.¹⁹ Greater adoption of open source technology will require the law to progress past current exclusive control concepts to break the connection between idea ownership and the rights of the community to improve based on community-wide knowledge. Maintaining tight IP control over innovation threatens the widespread adoption of the “best” technologies because it encourages developers to use openly available technology over technology bundled with licensing and modification barriers. The author cautions that it should be the role of law to support the development of global networks without questioning the politics of code and data ownership. Tight IP control will slow or stop the information flows crucial to innovative internet culture.

The author intends her book to be accessible to legal scholars, technologists, and anyone else interested in the way culture develops across the community of the internet. However, portions of the work are quite metaphor and acronym heavy, rendering it a more difficult read that is better suited to those with pre-existing familiarity with the internet’s origins and protocols. Given the dominance of U.S. corporations and culture on the global market, the author’s ability to evaluate internet culture is advanced by living outside of the U.S. market. As the intermingling of law and culture continue to develop, this book will serve as an effective starting point for further study on the evolving culture of the internet.

¹⁹ For example Microsoft grew by fostering a management culture in which IP was continually controlled and managed for the company’s strategic advantage. In contrast Linux successfully grew by requiring contributors make all their code and ideas freely available to anyone else abiding by the rules of the community (by accepting a GNU Public License).