

BOOK REVIEW

GRINGRAS ON THE LAWS OF THE INTERNET

Third Edition

By Clive Gringras and Elle Todd

Haywards Heath: Tottel publishing, 2008, 531 pp, £128, ISBN 9781845922436

and

JURISDICTION AND THE INTERNET: REGULATORY COMPETENCE OVER ONLINE ACTIVITY

By Uta Kohl

Cambridge: Cambridge University Press, 2007, 348 pp (incl. index), £58,
ISBN 9780521843805

This pair of new books on Internet law comes at an interesting time for the academic study of the internet. It is now fifteen years since Usenet users wrote of the 'September that never ended', referring to the opening up of Usenet to AOL users as a perpetual version of the familiar scenario whereby new university students would begin using Usenet through academic networks each September (with all the disruption and accommodation that one would imagine). Not long after this fateful day, commercial activities and 'mainstream' users were to make up the lion's share of the internet, and things have never been the same since. It is ten years since the Internet Corporation for Assigned Names and Numbers (ICANN)'s agreement with the US government to carry out certain aspects of the management of domain names. And it is - incredibly - five years since Facebook was launched. Internet law is an established part of mainstream curricula in many law schools, and the body of literature used for teaching and research purposes has gone beyond the speculative and theoretical that necessarily characterised earlier texts.

The new edition of *Gringras: The Laws of the Internet* is therefore particularly timely. Now in its third edition and edited by Elle Todd of Olswang (assisted by a number of contributing editors) the text functions in part as a handbook for practising lawyers but is focused quite clearly on internet law (as distinguished from the more traditional information technology law or computer law). It is therefore undoubtedly of interest to others. It is written in the style of an established legal reference book, representing in some ways a blend of traditional legal writing and rapidly-evolving technologies and markets. As Robert Miller (general counsel of Skype - again a business model not known in earlier days) notes in a warm introduction, the chapter titles are familiar to lawyers. Nevertheless, there are difficult issues where an approach based on legal history alone will fail. Indeed, it is notable that there is a strong concern with the

social aspects of the internet throughout, indicating that a more doctrinal approach cannot be compiled without reference to: the complicated personal interactions that take place using the internet; the cultural consequences of cross-border communications; and the difficult interaction between sensible policy development and reacting to seemingly controversial or dangerous uses of new platforms.

The major areas of law such as contract, tort and crime are each the subject of a dedicated chapter. The focus is on the law of the UK, including some useful information on relevant procedures in the courts, although aspects of EU and international law are included where appropriate. It is not a comprehensive study of international or comparative internet law, but the editors make no such claim. Indeed, given how, in academic circles, there is still a temptation to rely on US sources in the first instance, the collection of citations and precedents from the UK courts is a helpful counterweight. A comprehensive discussion of internet-related intellectual property issues is included in the longest chapter, with the detailed discussion on trademarks being a particularly useful section. It is, however, difficult to cover both the complexity of intellectual property law and the new issues raised by the internet in a single section. Another feature of note is how the economic aspects of the internet are treated, reflecting their significant role to contemporary practitioners of internet law. Substantial chapters on competition law and taxation are followed by a thematic exploration of “regulation and regulated activities”, which covers everything from electronic money to the *Audiovisual Media Services Directive*.

The matters discussed in the final chapter of *The Laws of the Internet* are the focus of a full monograph by Uta Kohl of Aberystwyth University: *Jurisdiction and the Internet*. It is fair to say that Kohl does cover some of the other topics relevant to internet law in her careful and nuanced work. Kohl approaches a question that has been at the heart of much academic analysis since the early days of the internet: what is the relevance of national legal systems in an environment that is designed for and characterised by communication, transactions and disputes that are potentially the subject of conventional legal proceedings in any number of jurisdictions? The contribution is original in how it brings together and reflects upon the various “false starts” in trying to deal with the challenge of establishing and maintaining jurisdiction. The suggestion that there is still a stark choice facing legislators (and others) between national law and a truly transnational internet is notable.

Kohl’s work has had the advantage of time. By this I mean that there have been enough cases, ill-fated legislative interventions, inchoate international agreements and practical agreements between commercial concerns to stand as a significant body of law. The analysis is therefore founded in a remarkably wide range of sources (in some ways an interim history of the question(s) of jurisdiction) and, while not having the value of a reference work of general interest (like Gringras), tribute must be paid to the quality of the footnotes – carefully supporting even the most theoretical of discussions.

The author’s experience of diverse legal systems is apparent from the chapter on the “country of origin” principle in particular. This principle, at the heart of many of the EU’s interventions into the area of internet law, is subjected to scrutiny. In fact, it would have interested this reader for the discussion on national law and the difficulties of transposing these ambitious EU measures to be more detailed. Any minor omissions in this regard are, however, more than compensated for by the clarity of expression throughout.

Towards the end of the book, Kohl inches towards an interesting analysis, including a unique discussion of the public-private divide and how it is manifested in decisions on enforcement. This area, relatively underdeveloped in internet law, is deserving of further analysis. In Kohl's case, she builds on it and reaches some quite far-reaching conclusions in her final chapter – frankly noting the failures of certain national and international measures, and rightly departing from those who would argue that the reestablishment of national borders is impossible by noting that, where the behaviour of the majority of users is conditioned or constrained by national requirements, this is itself a move away from a fully transnational internet. This sceptical, mass consumer-focused approach would have been a very unpopular one in the earlier days of internet law, but is rapidly becoming a key aspect of scholarship in the field.

Both books serve as a reminder to the reader that internet law is no longer an exotic or hypothetical area of either legal scholarship or legal practice, but an area in which significant cultural talismans and financial interests are at stake. While there is still scope for radical, disruptive innovation and advocacy through use of the internet and associated technologies, there is a well-established body of law that must surely be relevant to any user, whether satisfied consumer or blue-skies thinker. Those of us who write about and teach internet law find ourselves in the lucky position of having a wide range of books to choose from. While Gringras is more relevant to the busy practitioner and Kohl to the academic researcher, both illustrate and illuminate the advanced development of the laws of the internet's “perpetual September”.

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