

approved by previous clients rather than law tested in the appellate courts) may give the misleading impression to inexperienced individuals that issues in drafting of contracts are settled and without need of creative thinking.

Despite these criticisms, the book is a good example of its type. With the addition of the other books reviewed, a base is constructed from which a rigorous analysis can be made. Commercial liability for technology risks is a topic that will not diminish in importance for the foreseeable future, and it will remain a fascinating area of study.

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Notes

- 1 *St Albans Council v International Computers Limited*, Times 14 May 1996. A case resting on the effectiveness of a limitation clause in a development contract.
- 2 *Adobe v Beta Systems* [1996] SLT 604. A case on the effectiveness of *shrink wrapped* licence agreements in Scottish Law.
- 3 Appendix 5: paragraph 3.16(b), page 326.
- 4 Page 73 of the first edition. The 1996 Addison Wesley catalogue lists a second edition which has not been received.
- 5 *Weinburg's Zeroth Law* at 155.
- 6 Page 165.
- 7 E.g. the discussion of a network of rental of modems for the connection to the telephone system, on page 203, makes no reference to ISDN, Internet or other current industry standards.
- 8 E.g. bureau services providing obsolescent batch and terminal services are discussed but the far more complex outsourced management of a modern client/server network is not addressed.
- 9 Precedent [N].
- 10 Page 503 3(4).
- 11 Although, ominously, the words are available on floppy disk for an extra £50.

Internet Law and Regulation

Graham J.H. Smith (ed.)

FT Tax and Law, 1996, hardcover, £95.00, 156 pp., ISBN 07520 0286 4

Law and the Information Superhighway

Henry H. Perritt

Wiley Law, 1996, hardcover, £105.00, 730 pp., ISBN 0 471 12624 1

As the Internet has become increasingly commercialized, there has been considerable discussion concerning the role of national laws in the regulation of the activities which take place there. There can be no doubt that national legislation can and will be applied to those activities, although there is disagreement as to the extent to which such national laws can be stretched to cope with the more novel problems created by the developing technology. However, over the past couple of years, there has been a curious gap in the Internet book market in the area of practitioner-oriented texts. This has been ameliorated to a certain extent, at least on the US market, by the emergence of Internet law self-help books such as

Cavazos and Morin's *Cyberspace and the Law*¹ and Rose's *Netlaw*,² but practitioners have not been particularly well served to this point. This situation has now begun to change with the emergence of the UK law text *Internet Law and Regulation*, and the US law text *Law and the Information Superhighway*. Both seek to address the law as it currently pertains to the Internet, and as such make limited reference to issues relating to potential future legal developments.

Internet Law and Regulation is a compilation of chapters based upon seminars given by members of the UK law firm Bird & Bird, one of the leading firms in the UK information technology law sphere. It begins with a brief overview of the Internet which provides some concept of its infrastructure and players without delving too deeply into its technological mechanics. It then turns directly to content-related chapters dealing with intellectual property, defamation, content liability and protection, and data protection. Having discussed these issues, the focus shifts to aspects of provision of Internet services, with chapters on telecommunications and broadcast regulation, contracts between hosts, content providers and others, making contracts over the Internet, and payment mechanisms for Internet commerce. At this point it returns to a content-related chapter on prohibited and regulated activities, before concluding with a chapter on taxation and Internet activities.

This ordering of content would appear both counter-intuitive and unduly complicated. It would surely be more effective to deal first, as indeed a user or service provider would, with the relevant national and international regulation of the sector, and the contractual relationships between the various players. To jump immediately to content provision is to put the cart before the horse. A comprehension of the laws relating to content provision is obviously important, but it should be approached with a firm grasp of the existing legal relationships. For example, if we consider the position of a retailer considering the creation of a website to advertise and market its products, its first priority will not be the content of the proposed website, but rather its feasibility. Thus questions such as 'Do we create our own website, or contract the task out?', 'What guarantees will our Internet service provider give with regard to accessibility and promotion of the site?', 'Can we make contracts over the Internet?', 'Can we set up an Internet payment mechanism?' will take priority over content issues, for unfavourable answers to those questions may result in those content issues being rendered nugatory.

Equally, the reason behind the splitting of the content chapters, with the chapter on prohibited and regulated activities towards the end of the text, is hard to deduce. The content of that chapter is certainly diverse, covering, as it does, gambling, pornography, financial services, advertising on the Internet and contempt of court. However, one might wonder about both the title of the chapter and the order of its contents. On the first point, is copyright infringement not prohibited, and is the use of personal data not a regulated activity? On the second point, what is the relationship between gambling, pornography and contempt of court, and financial services and advertising. The chapter comes across as a grab bag of issues which perhaps the editor felt should be mentioned, but which did not fit comfortably within other chapters.

Such editorial caveats aside, the text provides a concise and accurate overview of English and Welsh law as it stood at the time of publication. It is, however, important to emphasize that, as with many discussions of Internet law in this country, the text is really concerned only with English and Welsh law, with very limited use of foreign sources and examples. This apparent tacit refusal to come to terms with the fact that the medium is a truly international one should perhaps concern us. This is not to say that texts concerned with Internet law and regulation should have regard to all possible permutations of the relevant

laws of foreign states, but given the willingness of some of those states to attempt to extend their extra-territorial jurisdiction when dealing with Internet issues,³ and also the differences of law within the UK,⁴ some clear acknowledgment of these potential problems would seem essential.

In addition, given the lack of experience that lawyers in the UK have with Internet law issues, one might perhaps have hoped for more in the way of illustrative examples or hypotheticals with regard to some of the potential problems, but their lack may perhaps be due to the natural caution of lawyers when dealing with matters where the law is still in flux. In addition, a table of abbreviations would have been useful, as it is unhelpful to have to search through a text to locate an explanation of the many TLAs and ETLAs⁵ that are a feature of any information law text.

Overall, this is still a useful guide to Internet law in England and Wales, and I would have no hesitation in recommending it to those who wish to learn about the issues, but for one sticking point—the price. For a relatively short work, a price of £95 is simply too much, even for a hard cover text. While practitioner texts have always been expensive, this asking price for what is essentially a collection of edited black letter seminar papers would be difficult to justify to the average purchaser. A paperback edition priced at £25–30 would surely be within the reach of a much larger audience, and thus prove much more useful as an educative tool. It would, for example, then become an attractive purchase for the legal academic, HE institutions attempting to devise sensible Internet policies and information technology law students.

Henry Perritt's text, *Law and the Information Superhighway*, is a rather longer and more ambitious project, but one which is perhaps rather more coherently ordered. The author has been heavily involved in the development of the law relating to the Information Superhighway by virtue of work which he has carried out for the US President's Office on Federal Electronic Policy, the European Commission and the OECD, and this clearly shows through in the scope and depth of this work.

It too begins with an overview of the Internet, but one which contains more detailed technical information, and a greater degree of legal and political analysis than is found in *Internet Law and Regulation*. It then moves to consider the legal aspects relating to the provision of Internet services, before proceeding to examine content restrictions in detail, examining in the process the relevant laws applied in some foreign jurisdictions. It concludes with a chapter on international law and trade, which attempts to provide a basic framework for the reader to get to grips with some of the international regulatory regimes, such as the GATT, the WTO, NAFTA and the EU, and the problems of dealing with issues such as transborder data flows, competition laws, enforcing judgments in other countries and international arbitration. A considerably longer work than *Internet Law and Regulation*, it provides a more analytical approach to the area, providing the necessary black letter law background and comparative material, and casting a weather eye towards future trends and developments, including discussion of the controversies in the USA surrounding encryption technologies, intellectual property and jurisdiction. This approach allows the author to suggest solutions to the many current lacunae in the law, as well as permitting the proposal of alternative non-legal strategies to deal with Internet-related problems, in particular methods of protecting intellectual property.⁶

In general, Perritt provides a calming voice with regard to the rise of information technology and the Internet. His aim is to show that even if a national information infrastructure is finally developed, there need be no panic over whether existing legal doctrines and institutions will be able to cope. In terms of national jurisdiction, he judges

that it will be business as usual: 'Any national legal system can enforce legal obligations against natural persons and physical assets located within its boundaries; that always has been the fundamental basis of legal jurisdiction.'¹⁷ Similarly he states that existing trends in international cooperation on civil and criminal matters will allow the law to 'deal with the NII with no more difficulty that [sic] it had dealing with ocean commerce, or international civil aviation, or telecommunications, when they were new.'¹⁸ As such, this may be comforting to those concerned by perceived lawlessness on the Internet, or to lawyers worried about their ability to advise clients adequately; it does, however, leave unaddressed some interesting questions about the purpose and scope of both newly minted and proposed legislation in areas such as encryption, intellectual property and content restriction. While the law need not, or be about to, change radically as the Internet develops, the effect of such development on the very nature of society in the information age is an entirely different matter.

As with *Internet Law and Regulation*, *Law and the Information Superhighway* is a valuable addition to the literature in this area. From the point of view of the practitioner, it has the added advantage of providing both non-legal strategies, and some suggestions as to future developments. Unfortunately, it is also saddled with a heavy price tag, such that it will probably remain a resource for law firm libraries. This is a shame, for there is much here that would be of value to a wider audience, not least the opinions of an author who has been, and will remain, an influential figure in the development of future US legislative policy.

In conclusion, while both texts make interesting reading and are worth considering if a rapid acquaintance with either UK or US Internet law is required, *Internet Law and Regulation* is something of a stop-gap measure, as it is limited in its scope and its material could be better arranged. As such, a text along the lines of *Law and the Information Superhighway*, despite its perhaps overly optimistic view of the future, would be a better model for a future comprehensive UK text.

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Notes

- 1 Cavazos, E. and Morin, G., *Cyberspace and the Law*, MIT Press, 1996.
- 2 Rose, L., *Netlaw*, Osborne McGraw-Hill, 1995.
- 3 During 1996 the Attorney Generals of both Illinois and Minnesota announced that they were considering action against anyone providing services on the Internet which were illegal in their states, but that residents of their states could obtain access to.
- 4 For example, Scots defamation law differs from that of England and Wales. A brief synopsis of the salient points is given below. For further information, the reader is referred to Norrie, K., *Defamation and Related Actions in Scots Law*, Butterworths, 1995. In Scotland, there is not the same distinction between libel and slander. Rather, an action for defamation arises as a result of an attack on a person's character, honour and reputation, arising from a falsehood, the falsity of which is rebuttably presumed. If, however, a statement cannot be proved to be defamatory by the pursuer, then an action for verbal injury may be available. This requires the pursuer to prove

falsity, intent to injure and actual injury. One of the more significant differences between English and Scots law in this area is that the defamatory statement need only be communicated to the pursuer for an action to lie (*Mackay v McCankie* (1883) 10 R 537) and justify an award of at least nominal damages. The purpose is to provide solace for the affront or injury felt. Thus a private e-mail communicating a defamatory statement from one individual to another may be actionable.

- 5 TLA, three letter acronym; ETLA, extended three letter acronym (four letters or more).
- 6 Perritt, H.H., *Law and the Information Superhighway*, at 458.
- 7 *Ibid.* at 31.
- 8 *Ibid.*

Multimedia Contracts, Rights and Licensing

Alan Williams, Duncan Calow and Andrew Lee

FT Tax and Law, 1996, hardcover, £125.00, 255 pp., ISBN 075200 1779.

Over recent years, an increasing number of businesses and academic institutions have become involved in the production of multimedia products, whether computer-aided learning materials, CD-ROM databases or simply basic WWW sites. It would seem, at least from anecdotal evidence, that many of them have done so without a clear understanding of the types of legal issues that may be raised by such activities, and that in some cases this may have had devastating consequences for their projects. Multimedia work tends to be expensive even when all legal issues are addressed, but it is even more expensive when it results in litigation for breach of intellectual property rights, defamation or other content problems. Such problems demonstrate the need for those involved in multimedia work to be educated as to the legal issues, not necessarily to avoid having to take professional legal advice, but rather in order to be aware that legal advice may in fact be needed.

Multimedia Contracts, Rights and Licensing is yet another text written by members of the solicitors firm Denton Hall, and would appear to be primarily aimed at the practitioner and publishing professionals markets, as may be deduced from its hefty asking price. It contains both a general guide to the law in the area of multimedia development and a number of sample clauses.

The layout of the text is admirably clear, with examples provided in boxes separate from the main text. Both contents pages and index are extremely specific, making it a moment's work to locate relevant categories. A comprehensive list of abbreviations is also included, an essential tool when dealing with information technology issues.

The text begins with a concise overview of multimedia, and a brief guide to the political and governmental issues which are driving current initiatives in the area of multimedia law. It then moves to consider the legal and regulatory framework, with eight chapters on copyright and related rights, and a chapter on content regulation, including an overview of relevant regulatory bodies and an examination of the laws relating to defamation, obscenity, advertising, privacy and data protection. The third part of the text then examines the production of a multimedia work, with three chapters on acquisition of rights covering, basic concepts of acquisition, the practicalities of acquisition and the negotiating and drafting of acquisition agreements. The fourth and final part of the main text discusses the development and distribution of a multimedia work, with three chapters considering exploitation, development and production, licensing and distribution, and the application of competition law to multimedia products.

The main text is followed by a series of appendices, including the addresses of the main collecting societies, information about new programmes set up to monitor and control