

MAKING LAWS FOR CYBERSPACE. CHRIS REED.

by

TOMÁŠ ABELOVSKÝ*

Chris Reed. Making Laws for Cyberspace, Oxford: Oxford Press, 2012, ISBN: 978-0-19-965761-2, 249 pages, Reprinted 2013.

Making Laws for Cyberspace is a compelling reading, written by a well-known expert. The author of the book, Professor Chris Reed, represents the most significant authority in electronic commerce law at the Queen Mary University of London. He has a long-standing practice in the field, which includes computer law, electronic commerce law, and cyberspace law. The author is well known to the legal professionals because he has published widely on many aspects of computer law and research in which he was involved led to the adoption of EU directives on electronic signatures and on electronic commerce. He is also a former Director of the Centre for Commercial Law Studies, and from 2004 to 2009 was an Academic Dean of the Faculty of Law & Social Sciences at the Queen Mary University of London.

Making Laws for Cyberspace brings a broad investigation into the governing and making the right kinds of laws for the cyberspace. The author builds up a serious research study based on his lifetime academic experiences. He asks whether the current state of law in cyberspace is at the point which makes it possible for cyberspace users to act lawfully? The author presents a comparative analysis of laws relating to the cyberspace with an impact to the United Kingdom, the United States and European countries. One may say that the book symbolizes an amazing journey of searching for a perfect analysis of cyberspace as a space where well-meaning actors should behave in a proper manner. Throughout the reading we still have questions in our mind who should be the cyberspace ruler and what should

* Tomas@abelovsky.com

that law say? So, how has the author helped us to find the answers and meet his goals?

The author tries to find a specific concept – the model for cyberspace laws which focuses on human actions rather than technology and law procedure. It is obvious that he takes the view that normative system in cyberspace has its fundamentals based on voluntary obedience rather than fear of enforcement. The book is divided into four parts. In the first part we encounter an opening with explanations of processes behind the command and control approach in the cyberspace. The author looks for reasons why the cyberspace should be governed. He enlightens at this place purposes of the cyberlibertarianism and cyberpaternalism schools. Further, we learn about the most important limits on control. After describing the limits on the use of law to control cyberspace users conduct, we begin a very interesting excursion to the lawfulness. At least to its theoretical model. Basically, “[h]ow these can be achieved is the story set out in this book,” the author concludes in the end of this introductory section. According to the author we have to change our mind-set by following a different approach to the cyberspace law-making. The lawmaker must persuade addressees of law that he is the legitimate authority to rule their conduct and must “consider the content of the law to ensure that imposes obligations on cyberspace users which are meaningful in the context of their activities.” The second part of the book is dedicated to the law-making authority and the third part to the content of laws (suitably entitled as respect-worthy laws). Both parts represent the core of the work. We find here arguments standing for that cyberspace participants (actors) will not obey laws if they will not accept the law-makers authority to govern their cyberspace activities.

The author provides at this place notable observations and sophisticated findings. For example, in chapter on authoritative law-making he describes that the main role of the contracts (i.e. rules set by eBay or ICANN, which work through a web contractual obligations) is to protect the system against claims in national courts by unhappy addressees of decisions, rather than to make those decisions enforceable. At the end of the chapter we learn why the lawmakers should avoid the situation where the cyberspace actor is subject to competing claims to the lawmaking authority. A well-handled third part of the book deals with the so-called “respect-worthy laws”.

It opens with a question on what makes laws worthy of being followed or respected in the cyberspace. Here the author discusses various views on

cyberspace communities and how they accept legal norms. Also a vivid discussion concerns meaningful obligations imposed by law and their competing contradictory obligations. Moreover, the author also provides very interesting examples of three ways how to make a meaningless law for cyberspace authority: make it complex, make it contradictory to other obligations and surpassingly, make it absolutely precisely. Another interesting chapter relates to a mismatch with cyber reality. The author reveals here how many lawmakers can be unwitting prisoners of history and blindly believers of how the cyberspace works (a business model is what they reflect to the laws). In the last part of the book the author raises a question “[h]ow should lawmakers direct their enterprise of making laws which are effective in cyberspace?” So, is it by recognizing the limits, by making perspective shifts and examining the law-making proposals from the point of view of the cyberspace actor, by providing a proper community regulations, by avoiding normative conflicts, by making understandable law and making an apparent connection to what the cyberspace actor actually does? Maybe, but certainly this is the way of how we can confirm the main author’s argument that the law cannot operate as a solo mechanism for controlling the behavior of cyberspace actors. The author emphasizes that the lawmaker must concentrate on influencing this behavior, rather than deluding itself that control and enforcement is realistically possible.

From the formal point of view, the book includes an extensive number of authorities in the footnotes, which are very helpful in further study and research. Likewise, we can find outstanding useful tables at the beginning, i.e. a summary of cases, a table of legislation organized by jurisdiction, and an index.

This book definitely opens a new paradigm on cyber law as a law where good lawmakers focus more on human behavior than on technology. Also, it kindles a professional discourse on the value of law which has direct impact on the cyberspace and method of regulating cyberspace actors in the best way. I am confident that the author has not only met his objectives, but has also exceeded readers’ expectations. Finally, it must be noted that the reviewed book is an outstanding piece of work in the field of ICT law which may be recommended to academics as well as to legal practitioners all over the world.