

Curriculum Dilemmas – Teaching Global Cyberlaw

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Abstract

This paper will outline solutions to the curriculum and ‘coverage’ dilemmas faced by law teachers who work in the area generically labeled ‘cyberlaw’. It will consider the competing policy and curriculum pressures that are inherent in the variously named cyberlaw subjects including Computer Law, Cyberlaw, Electronic Commerce/Internet Commerce, Intellectual Property, Digital Crime, Digital Evidence and Computer Searches (4th Amendment). Law school offerings in Australia, the United States and the U.K. will be considered.

The author’s solution will include an outline of nine recurring themes in cyberlaw subject areas. These are offered as a sword to slay the dragon of ‘coverage’ that often leads to an overburdened syllabus and poor coordination between subjects offered within the same school or faculty. The themes include:

1. Where am I? Jurisdictional conundrums and canons of regulation (e.g. mice vs. elephants; choke points; international jurisdiction)
2. Who am I? Who are they? Transacting via networks and via other legal persons (e.g. electronic signatures and authentication issues; digital agency; bots; conduit liability)
3. Who pays me, and how? Electronic money and funds transfer (e.g. electronic banking; network money)
4. Who protects me? Spreading and preventing transactional risk (e.g. network-related insurance products; government guarantees and supervision; dispute resolution; technology as a risk management/ reduction tool)
5. Who funds me? (e.g. electronic credit, security, valuation of IP and databases; problems for banks)
6. Who taxes me? (e.g. taxes, tariffs etc.; digital stamp duty anyone?)
7. Who bugs me? (SPAM, hacking, network ‘crimes’)
8. Who came before me? Historical analogies for technology regulation (e.g. a history of telecommunications; a history of standards)
9. The pervasive problems of intellectual property (IP implications are ubiquitous; how to recognize them even before they appear; everything from Google Book Search to Second Life)

These nine themes also help the teacher to spend more time on single topics thus avoiding the skeletal ‘survey syllabus’.

The “Pac-man” curriculum problem will also be examined. By this is meant the process through which mainstream subjects (like contract and civil procedure) tend to ‘eat up’ the content of cyberlaw courses as computer technology becomes (even) more commonplace in society. For example, electronic contracting is now very much a part of standard contracts courses and no longer reserved for specialist IT courses. A ‘next-level’ set of topics will be put forward for faculty consideration to offset the Pac-man problem. For example, the law of the blogs, advanced digital evidence, computer crime, mobile commerce, virtual life and property, eDiscovery and document ‘retention’, cyberterrorism, internet taxation etc. Some predictions will be made about the future importance of such areas.