Weaving the mesh: finding remedies in cyber-space

JOSEPH A. CANNATACI and JEANNE PIA MIFSUD-BONNICI

ABSTRACT: This paper will categorise Cyberspace as a microcosm of Darwinistic evolution, tracing the organic growth which has resulted in the increasingly tangled web of rules that today stretches throughout the online world. This evolution has produced a complementarity and interdependence between self-regulation and state regulation in a manner which will probably long affect current and future trends in the laws of cyberspace. While exploring the interplay between self-regulation and state regulation, the discussion considers the likelihood of success of formal attempts at Internet governance. It is argued that the seeds of failure for a “Grand Internet Treaty” may lie in the origins and inherent characteristics of the structures of cyberspace: the very things which make the Internet an attractive proposition to many may threaten to defy the attempts of those who wish to control it more. Conversely, it is also argued that failure is not guaranteed. The paper concludes that, while rule-systems will continue to converge, the driving force will remain the perennial search to provide remedies to the needs of clients. The latter drive for real-time remedies for real problems will probably produce workable rule-systems faster since they are pushed by the needs of millions of customers operating within the context of online market economics. This is in direct contrast to the development of formal rules for Internet Governance by states, a debate which at best excites only a few hundred people around the globe. Lawyers need practical solutions for their clients and this paper identifies a number of Private International Law problems that will increasingly dominate Public Law issues in Cyberlaw. One of the tentative conclusions explored is that the search for remedies will actually be successfully utilised by those arguing for formal Internet Governance, further reinforcing the mesh produced by the constant intertwining of self-regulation and state regulation.

Note to the Papers Sub-Committee BILETA2006. For as long as there are transactions in cyberspace which may lead to disputes then lawyers need a forum and a law in order to be able to provide remedies. Which forum and which law are the next logical questions but the current debates on jurisdiction have not yet settled the matter as to whether forum and law are capable of being satisfactorily resolved through self-regulation or the extent to which state regulation is required. The manuscript in preparation is intended to explore a number of common examples of problems arising in cyberspace that practising lawyers currently and foreseeably have to deal with. These problems are typically Private International Law issues that will increasingly dominate Public Law aspects of Cyberlaw. Half a dozen cases will serve as the springboard for discussion of what affects cyber-dispute resolution today and why this has come to be. The discussion will then move on to examine whether such disputes will be increasingly settled through mechanisms established by self-regulation or by state regulation and will conclude by suggesting that these two forms of regulation intertwine to form a meshed rule-system which is likely to continue to evolve organically. This evolution is likely to affect the nature and growth of dispute-resolution mechanisms available to users of the Internet and their lawyers in particular.