
preface to the third edition

It is a privilege and an honour to be writing the preface to the third edition. It has been more than six years after the first edition was prepared. The numerous reprints are heartening and humbling to note. My grateful thanks to so many readers for their support!

There are a number of themes and areas of focus within the realm of Cyber Laws that need our attention; here I will focus on two basic issues.

Terminology and Nomenclature

We need urgently to get our terminology and classification right. This is a serious issue. Over the years, the terms “computer law”, “internet law”, “cyber law” have been used carelessly to mean the same thing. Cyber Law and New Media Law relate to the medium of the Internet. Care must be taken to distinguish them from “computer law”.

‘Information Technology’ law, the term used by the Government is ambiguous, especially when the legislation focuses on electronic commerce. “Information Technology” could mean many things unrelated to the Internet.

An effective policy framework for electronic commerce in India

The following questions need to be addressed: Where do we come from (international perspective), what do we want to achieve (objective of e-commerce policy) Why e-commerce policy (major concerns and challenges), the expected role of government; how long is the process going to take (phases) Who should participate (stakeholders); where are we in the process (Discussion document, Legal report and/or Green paper), and comment on the process.

The ‘Indian’ Background

It is imperative that India should develop a policy that is in harmony with international best practice so that it is not excluded from trading electronically with global partners. In India, the intention is not to re-invent nor work in isolation. Internationally, many players are moving to explore e-commerce and its implications. India is therefore monitoring developments and following the debates that are taking place around the world. Work done by some leading international organisations has been taken into consideration: EU, GIIC, OECD, WIPO, WTO, World Bank, ITU and others. Initiatives by other governments in the developed, emerging and developing worlds are also being examined. Lessons are being drawn from various international experiences.

Goals

The ultimate objective of developing electronic commerce in India is to grow the economy (through creation of jobs, expansion of international trade) and most important to better the lives of citizens. The India government sees its role as an enabler, facilitator, educator and law enforcer to prevent cyber crimes and model user of e-commerce.

(Contd.)

preface to the third edition (contd)

Concerns

For the successful adoption of e-commerce, the Government will have to deal with the following challenges, to mention a few:

Security

- The greatest challenge is to ensure effective methods of protecting privacy over the Internet

Legal issues

- Need to identify possible legal barriers to the development of e-commerce

Lack of understanding and education

- Better education in the use of e-commerce
- Lack of preparedness by governments, institutions, consumers, companies and SMEs

Negative socio-economic impacts – for example minimize job losses and other associated risks.

The Process

Some comment can be made regarding the structure of the process, working groups, team aspects, intergovernmental involvement, stakeholders' participation, teething problems, voluntary nature of process, degree of open and transparent participation, learning curve, unconnected population, mixed feelings regarding timeframes, fears of excessive regulation. These issues may contribute to the delays or a much faster and smoother transition into a White paper. There will always be some loopholes or gaps in any process of this nature, which will invite criticism. Governments must be prepared to address the gaps and handle criticism positively otherwise that is likely to derail the process which has good intentions.

Despite the efforts to encourage collaboration and participation across the spectrum, it is difficult to reach everyone with information. Awareness creation activities are absolutely important, both in terms of communicating messages and getting people involved in e-commerce activities especially rural communities and small, micro and medium enterprises. On line communications, where available should be encouraged by all means as a faster means of communications. The consultative process can bring about, on one hand positive results in terms of transparency, and significant inputs while on the other hand might delay the process. The process needs to be managed very well with clear timeframes set as much as flexibility (changing timeframes) may be allowed.

This prefatory note also contains acknowledgements to individuals, institutions, governments and companies who have contributed to making the text richer in meaning and experience. My family and friends, I can never thank enough! I am deeply indebted to them. My eternal gratitude to the three 'forces' in my
(Contd.)

**preface
to the third edition (contd)**

life, Mummy, Gunjan and Podgie. This text is dedicated to them.

This new edition also welcomes our little boy, Mark! Our son who has brought us so much joy and is all we ever wished for!

My gratitude to my mother, parents-in-law and our entire family. Gunjan, for always believing in me; for her love and faith in me! Andrew, my brother for always being there for me. For John, for walking with me all these years.

The Ministry of Communications and Information Technology, Government of India, in particular the Controller of Certifying Authorities, who invited me to advise the Ministry during which process we learned and shared a lot.

The International Bar Association, particularly the Committees on Technology and Electronic Commerce and Intellectual Property for inviting me to deliberate on Internet Law and Policy at Cancun, Mexico [2001], Durban, South Africa [2002] and San Francisco [2003]. The Inter Pacific Bar Association for inviting me to speak on numerous occasions particularly at Tokyo [2001 from where I developed the theme of 'Regulatory Norms in Indian Cyberspace'].

My thanks to Law Colleges and Management Schools for inviting me not only to take lecture series, but to frame courses in Internet Law, Electronic Commerce and Intellectual Property. My particular thanks to the teachers and students of [in alphabetical order]: the Amity Law School, New Delhi; the Fore School of Management, New Delhi; the Indian Institute of Management, Lucknow; NALSAR, Hyderabad; the National Law School of India University, Bangalore; the National Law University, Jodhpur; the School of Convergence, New Delhi; Symbiosis Society's Law College, Pune.

My personal thanks to the law firm of Fox Mandal Little and to Som Mandal in particular.

My thanks to my publishers, Wadhwa & Co.; without their support this would not be possible.

I do hope this text is useful to all readers. I need to record my gratitude and appreciation for all comments and observations on the first and second editions of the text. Suggestions gratefully received were incorporated into this edition.

**19th APRIL, 2007
"AKSHAYATRITI DAY"**

RODNEY D. RYDER

preface to the second edition

I will attempt to outline few themes in this prefatory note; one is the governance of the Internet, the other trends and the evolution of the Internet Law and Regulation in the Indian context.

The Internet has tested the limits of regulation, prompting some to declare 'independence'¹ and yet others to declare it beyond the limits of governance.² One of the purposes of this text is to build a global community of people who are thinking about all this in a serious way. As time passes, one aspect of governance is clearly visible, the will of governments to be seen and 'felt' on the Internet. Governments across the world seem eager to put to rest the notions that cyberspace can't be governed.

There are four constraints on [human] behaviour and freedom. They are the law, norms (cultural and social influences), markets and—crucially—architecture. Architecture is a regulator in real space as well as cyberspace, and it's essential to think about both. Napoleon III wanted fewer revolutionaries, for example. So he rebuilt Paris with wide streets, making it harder for revolutionaries to hide.

Architecture in Cyberspace, rather, the Architecture of Cyberspace has begun to work with the law. The emphasis on anti-circumvention legislation is the result. There are core architectural features, including TCP/IP, the data-shipping protocols. Technologists build it for the functionality. Lawyers look at it and notice certain features.

Traditional legal systems have had great difficulty in keeping pace with the rapid growth of the Internet and its impact throughout the world. While some laws and objectives have been enacted and a few cases have been decided that affect the Internet, they leave most of the difficult legal issues to the future. In spite of the recent fluency of legislation world-wide, it is unlikely that courts and legislators will be able to provide sufficient guidance in a timely fashion to business [and lawyers] to enable them to engage in commerce on, or otherwise take advantage of, the Internet in a manner that avoids or minimises unexpected consequences or liabilities. This book aims to classify and arrange legislation world-wide as the governments [and indeed businesses] across the world strive to meet consumer expectations. It is interesting to note the consumer-centric approach of electronic commerce legislation in Europe in particular.

'Computers, the Internet and Electronic Commerce': this text covers legal issues related to the 'new medium' [the Internet] and for clarity sake avoids issues relating to Computer Law. Computer Law as we know it today, began the day computer manufacturers 'discovered' a world market for more than five computers. Computer contracts and indeed, computer law govern the myriad

-
1. In February 1996, John Perry Barlow issued a manifesto called <A Declaration of the Independence of Cyberspace>. http://www.eff.org/pub/Publications/John_Perry_Barlow/barlow0296.declaration.
 2. Johnson, David R./Post, David G., Law and Borders - The Rise of Law in Cyberspace, 48 Stanford Law Review 1367 - 1402 [1996].

(Contd.)
