# Making Laws in a Digital Age

## Response to the Speaker's Commission on Digital Democracy by Professor Chris Reed, Professor of Electronic Commerce Law, Queen Mary University of London

### 1. Could technology improve the access to and usability of both legislation and the law-making process for the citizen, representatives and professionals (such as lawyers), and if so do you have any suggestions?

Technology has already transformed access to legislation. The establishment of BAILII through the efforts of Laurie West-Knights and the Society for Computers and Law, and the subsequent opening up of the Statute Law Database, means that all enacted legislation is now available to anyone with internet access. Parliament's own website makes draft legislation available.

Currently this information is a close analogue of the printed legislation. Thus the user needs to mosaic together the original legislation and its subsequent amendments if using BAILII to discover the version of the legislation in force at the relevant time. The Statute Law Database allows a particular date view, but only on a section-by-section basis. Usability in this sense can, and surely will, be improved as part of the evolution of both systems. But in this form, legislation is not really usable by the general public.

And I take the view that legislation, as it is currently made, is unusable by the general public. This is because it is addressed to lawyers and not to the lay person. Technology would not change this.

Technology can, of course, be used to explain legislation to the public – the Office of Fair Trading website contains many good examples. But at present, and for some years to come at least, explanations of legislation will have to be written by humans. Technology can make these explanations available, but not much more.

### 2. Should you need to be a lawyer to understand and use an Act?

As a matter of *fact* you do need to be a lawyer to understand and use an Act, or at least a person with enough training (formal or informal) in that part of the lawyer's skills. This is because Parliament's legislative output only speaks to that group of people. Reading a single Act is very hard for those without legal training, and even if that person does not give up, reading the Act alone does not convey the law. The Act only has meaning in the full context of other Acts, SIs, judgments and procedural rules. By the time that has been mastered, the reader is more lawyer than ordinary citizen.

What the question ought to ask is whether Parliament should change its legislative approach in a radical way. Law would need to be addressed to the lay citizen, and not as at present to those who apply and enforce the law. In theory this is possible, though it should be recognised that the Code Napoleon had this aim but failed to make lawyers redundant.

But it should also be noted that this kind of law has to be very different from our present system. It needs to be far less detailed, and to rely heavily on open-ended concepts such as fairness and reasonableness. Such an approach drastically reduces the precision of the law, and makes its application far more uncertain, because the open-ended  elements can only be decided after the event. This trade off of certainty for understandability might be worthwhile (I discuss this at some length in Chapter 8 of my book, *Making Laws for Cyberspace* (OUP 2012)) but is far too dramatic a change to ensue from this consultation.

It may also be worth noting that the sociological evidence is that citizens do not obey the law, but rather the social norm that they should act lawfully. And they frame their acts with respect to what they *believe* the law to be, even though those beliefs are usually inaccurate. It is not clear whether understandable laws would change this.

## 3. Should technology be used to integrate citizens' views better into the legislative process? At what stage of the legislative process would this work best? How could the Public Reading Stage be improved?

I strongly believe that citizens' views should be taken into account in formulating the policy which leads to lawmaking. But for the reasons explained above I take the view that once a Bill has been produced, there is little point in taking citizens' views into account unless policy questions are re-opened. Legislation is not intended to be read by citizens, and so it is a waste of everyone's time to seek their views.

The right place to seek citizens' views is at the time of policy development, ie at Green and White Paper stage. I think it is unfortunate that policy is largely immovable once a White Paper is produced, as it is often only at that stage that the implications of the policy become fully apparent. I'd also suggest that Green and White Papers are also written much more for experts in the field than for the general public, and so are not very effective at eliciting those views. And of course, much legislation is not preceded by Green and White Papers.

I think the most effective way to begin seeking citizens' views would be if each Bill were accompanied by a moderately full explanation of its legislative aims, ie what the drafter hopes the Bill will achieve. This is the kind of document which might be useful in eliciting views. If the legislative aims changed, following a policy change, the document could be amended and further views sought. This is something Parliament could do itself, rather than relying on the Government.

Technology is a very efficient way of discovering what people think if it is used properly. Asking a question and then collating the answers is not effective, at least as far as ordinary citizens are

concerned. Nor is a Twitter-style discussion. Each of these merely discovers the public's starting prejudices, not what they think about the matter after fuller consideration.

I have had some success in discovering citizens' views in online discussions of digital music copyright law. In those discussion I provided the expert explanation, as did some other participants. Over the course of 10 or 20 pages of discussion, participants clarified and modified their positions. Ultimately the range of views became clear, as did the reasons those views were held, and how they might apply to law reform. I suspect this is the online equivalent of a focus group, though self-selected by being interested in the topic.

I have not used this technique for formal research work yet, but it seems to me the kind of mechanism which is most likely to be effective. It may be that responses from social scientists will explain the other possibilities.

I think my overall position could best be explained as follows. Technology is excellent at gathering information, but not (as yet) good at eliciting understanding. Information about citizens' views is of little assistance to Parliament, but an understanding of those views is very useful. Any initiative Parliament takes in this area will therefore need substantial human activity, with technology playing a secondary role.

4. **Are there any examples from other parliaments/democratic institutions in the UK or elsewhere of using technology to enhance legislation and the legislative process, which the Commission should consider?**

I am not aware that any legislators elsewhere have yet made much more use of technology than making the law available and providing a means of contacting legislators. But I do not claim any expertise here.