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Response to the open call for evidence on “Making Laws in a Digital Age” - Speaker’s Commission on Digital Democracy

1. Introduction: Laws Are Not Only for Lawyers

The legal doctrine of “*ignorantia juris non excusat*”, namely the fact that ignorance of law is no excuse¹ (often also paraphrased to include “*ignorantia iuris nocet*”, i.e. not knowing the law is harmful) presupposes a law that can be accessible, clear and precise. The Diceyan rule of law² discussed also in Raz illustrates this point further: laws need to be construed upon open, general and clear rules³. In this respect not only citizens are not required to have a legal background so as to understand legislation but it is imperative to make the legislative framework clear, open and accessible to all.

2. Can Technology Help in Making Laws? From E-Governance to E-Democracy

In this task, technology can play an important role and provide a useful tool for creating an informed and active citizenry, contributing thereby towards a bottom up democracy. The latter, namely the shift from e-governance to e-democracy has been a notable example of the capacity technology has to influence public law as a whole⁴. In this vein, technology can support three levels of participation: e-enabling (format that enables access and perception of laws), e-engaging (supporting deliberation on policy issues) and e-empowering (law-making as an open ended procedure)⁵.

¹ *R v Lee* [2000] EWCA Crim 53

² A Dicey, *Introduction to the Study of the Law of the Constitution*, 10th ed. (Macmillan 1959)

³ J Raz, “The Rule of Law and its Virtue” (1977) 93 LQR 195. See also P Craig, “Formal and Substantive Conceptions of the Rule of Law: an Analytical Framework” (1997) 3 Public Law 467-487.

⁴ C G Riley, “The Changing Role of the Citizen in the E-Governance & E-Democracy Equation” (2003) London: Commonwealth Centre for e-Governance

⁵ A Macintosh, “Characterising E-Participation in Policy-Making”, Proceedings of the 37th Hawaii International Conference on System Sciences (2004) IEEE

3. How Can Technology Shape Legislative Process? Examples

With regard to the ways technology can shape legislative process and aid its accessibility and comprehension, this has not gone unnoticed. In what follows, the role of technology in law-making is addressed further and explained through practices and projects already in place in other countries. For overall clarity, the following taxonomy of at least four methods of using technology for making laws in the digital era can be suggested:

3.1. Interactive Applications

While the vast amount of legislation can be found online, either in official websites (www.legislation.gov.uk) or unofficial blogs and wiki entries, the use of interactive applications visualising such data is a novel way of harnessing technology for this cause. A great example of this is a new interactive application on the European Parliament website, which explains the legislative procedure adopted by the European Parliament in a simple and straightforward manner. As stated in the EP website: "The application explains the ordinary legislative procedure using graphics with short explanations. It is also possible to get longer and more detailed descriptions by clicking on the links and the tabs. In addition the application shows how long each step in the procedure takes, how you can influence what is being decided and how the votes take place"⁶.

3.2. Gamification Techniques

Interactivity can be further supported by more elaborate techniques, gamification being one of them. Mostly applied in marketing as a tool of customer engagement⁷, gamification can be put to further uses supporting and improving policy making⁸. A recent example in this respect comes from the state of Massachusetts, where in 2012 a game called "What's the Point?" was launched for environmental education policy and master planning purposes⁹.

3.3. Legislative Crowdsourcing

The benefits of crowdsourcing, namely the solicited advice/data offered by online communities, have been discussed in detail in literature¹⁰, with Wikipedia serving as an excellent example of the efficacy of the "wisdom of the crowd". Could this model further be of use for making laws? The recent cases of the Icelandic Constitution and Marco Civil in Brazil illustrate well that involving the citizens in the legislative process not only makes its outcome more accessible to the general public but it further serves as the perfect substantiation of a

⁶ <<http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html>> accessed 31/3/2014

⁷ B Reeves, J. Leighton Read *Total Engagement: Using Games and Virtual Worlds to Change the Way People Work and Businesses Compete* (Harvard Business Press 2009) 177

⁸ J Baldwin-Philippo, E Gordon, "Designing Citizen Relationship Management Systems to Cultivate Good Civic Habits", available online <<http://www.bostonarearesearchinitiative.net/assets/Baldwin-Philippi%20&%20Gordon%20Policy%20Brief.pdf>> accessed 31/3/2014

⁹ <<http://www.statetechmagazine.com/article/2013/09/how-gamification-helps-local-governments-engage-employees-and-citizens>> accessed 31/3/2014

¹⁰ D C Brabham, "Crowdsourcing as a Model for Problem Solving: an Introduction and Cases" (2008) 14(1) *Convergence: the International Journal of Research into New Media Technologies* 75-90.

bottom up democracy. The Finnish Constitution has provisions for citizen initiatives since March 2012: when an initiative receives more than 50.000 signatures, the Parliament is required to discuss and vote on the matter¹¹. In the US TechCrunch's new project, CrunchGov, is an online platform seeking to analyse technology related policy on a daily basis. This includes a political leaderboard that grades politicians based on how they vote on tech issues, a light legislative database of technology policy, and a public markup utility for crowdsourcing the best ideas on pending legislation¹². Open knowledge and open data based on active citizen participation can thus affect law-making in an unprecedented manner in the digital era.

3.4. Harnessing Big Data

The rise of computational legal studies and the use of algorithms to enhance overall understanding of vast amounts of aggregated data is beyond doubt a highly useful tool in the digital era. As such, harnessing big data for making the legislative procedure clear, foreseeable and accessible could be one of the main challenges of the legislature in the digital era. In this respect, the Legis project (2009)¹³ is a notable initiative by the Dutch government aiming to redesign the legislative process by using IT services. After an initial analysis of the legislative process from a procedural point of view, all gathered data (e.g. legislative actors, activities performed and function of an Act) are used to model the legislative cycle using the Business Process Modelling Notation (BPMN). Ultimately, the legislative procedure is monitored at a normative level; further improvements are introduced through an integrated system for storing, tracking and publishing legislation enabling standardisation and knowledge sharing between involved legislative actors.

4. Conclusion: An IT Enabled Active and Enlightened Citizenry

According to a recent post in the Foreign Office Blogs (FCO), in the UK's House of Commons, "there are 650 constituencies averaging 68,000 voters each. MPs ignore the needs of these constituents at their peril"¹⁴. As suggested in this brief, technology can support law making procedure based on a direct interaction between the state and an informed and active citizenry. The World Summit on the Information Society (WSIS, Geneva, 2003, and Tunis, 2005) has recognised the right of everyone to benefit from the information society and has highlighted the importance of a people-centred, inclusive and development-oriented information society that fully respects and upholds universal rights. In this respect, the Speaker's Commission on Digital Democracy task to seek ways of strengthening Parliamentary democracy in the UK in the digital era is the first step towards some much needed reforms in the legislative process.

¹¹ <http://cochette.xrce.xerox.com/comtech13/papers/paper1_aitamurto_landemore.pdf> accessed 31/3/2014. The Italian Constitution (1947) has a similar provision in art.7.

¹² <<http://techcrunch.com/2012/10/26/crunchgov-techcrunch-policy-platform/>> accessed 31/3/2014

¹³ Kamerstukken II 2009/10, 31731, nr. 6. (Dutch Parliamentary Papers of the House of Representatives of the Netherlands)

¹⁴ A Pereira, "Legislative Practice in Brazil and the UK", available online

<<http://blogs.fco.gov.uk/speakerscorner/2014/02/20/legislative-practice-in-brazil-and-the-uk/>> accessed 31/3/2014