

Governing Cyberspace: a US Approach

A highly theoretical, and interesting, article on the rules governing e-commerce transactions (or “cyberspace”, as the author puts it) has been posted on SSRN. David G. Post’s article, “**Governing Cyberspace**“, was originally in the *Wayne Law Review*, Vol. 43, p. 155, 1996. Here’s the abstract:

What is the source of those law(s) that will govern our interactions in cyberspace? What body of rules will participants in cyberspace transactions consult to determine their substantive obligations and who is to make those rules? This paper sketches out two alternative models for the way in which order can emerge in this environment, models I refer to as Hamilton and Jefferson. Hamilton involves an increasing degree of centralization of control, achieved by means of increasing international coordination among existing sovereigns, through multi-lateral treaties and/or the creation of new international governing bodies along the lines of the World Trade Organization, the World Intellectual Property Organization, and the like. Jefferson invokes a radical decentralization of law-making, the development of processes that do not impose order on the electronic world but through which order can emerge, in which individual network access providers, rather than territorially-based states, become the essential units of governance. The normative choice is a significant one, and I argue that mobility users’ ability to move unhindered into and out of individual networks with their distinct rule-sets is a powerful guarantee that the resulting distribution of rules is a just one; indeed, that our very conception of what constitutes justice may change as we observe the kind of law that emerges from uncoerced individual choice.

You can download the article from **here**.