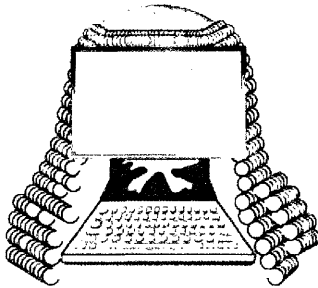


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Wikis and the Law

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Scholarship on the legal ramifications caused by wikis and arguably the most famous wiki, Wikipedia,¹ continues to grow.² The legal issues caused by this new technology, based on the premise of allowing any web user to edit online content, are now well known. Such issues include defamation, copyright infringement, and plagiarism.³ There has been little scholarly engagement, however, with the use of wikis to shape the very rules that govern our society: the practice and development of law itself. Indeed, wiki technology, with all its legal evils, is being used innovatively in a number of jurisdictions to aid in the development of the law and its teaching and practice.

This article provides a definition of the wiki model and discusses the various uses of wikis. It will then consider the use of wikis in the teaching of law and, finally, the possible role of wikis in the development of law. It will conclude with a brief evaluation of Australian possibilities for wikis and law.

Delaney and Brian Fitzgerald, "Legal Issues for Wikis: The Challenge of User-generated and Peer-produced Knowledge, Content and Culture" (2007) 14(1) *eLaw Journal* 245 @ <https://elaw.murdoch.edu.au/issues/2007/1/eLaw_legal%20issues%20for%20wikis.pdf> at 29 April 2008. For an international perspective, see Ken S. Myers, "Wikimmunity: Fitting the Communications Decency Act to Wikipedia" (2006) 20(1) *Harvard Journal of Law & Technology* 163.

³ See also Wikipedia, 'Criticism of Wikipedia', @ <http://en.wikipedia.org/wiki/Criticism_of_Wikipedia> at 16 June 2008.

¹ See Wikipedia @ <http://en.wikipedia.org/wiki/Main_Page> 16 June 2008.

² See, for example: Catherine Bond, "Legal Controversies Surrounding Wikipedia" (2007) 68 *Computers & Law: Journal for the Australian and New Zealand Societies for Computers & the Law* 4; Peter Black, Hayden

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Wikis and their Uses

Many readers will be familiar with the wiki model for online collaboration. The definition of a wiki is simple. According to Wikipedia, “[a] wiki is a collection of web pages designed to enable anyone who accesses it to contribute or modify content, using a simplified markup language.”¹ The term ‘wiki’ is Hawaiian for ‘quick’, and was first used in this context by Ward Cunningham. Cunningham was responsible for the first wiki, “WikiWikiWeb”, which began in 1995² and, since then, ‘wiki’ has become a commonplace term within the online community.

Following the growth in the Internet and the possible uses for wikis, all manner of wikis have been created. Many comprise the basis for shared forums where individuals with a common interest can meet, create and share content on that topic. The Wikipedia page, “List of Wikis” highlights only some of the communities.³ Wikis range from online encyclopedias (including Citizendium⁴) to culture-based creations (including Lostpedia,⁵ which is dedicated to all things about the television series *Lost* and Wookieepedia,⁶ an amusingly titled but impressively comprehensive *Star Wars* wiki⁷).

Wiki technology has also been harnessed in the academic sector. Rather than maintain a website where users can simply read about new publications, a number of academic authors, particularly in the United States, are using wikis to allow readers to play a more interactive role. U.S. legal academics Lawrence Lessig and Yochai Benkler are two noteworthy examples. In 1999 Lessig published his well-respected *Code and Other Laws of Cyberspace*, arguably only at the start of the Internet phenomenon.⁸ With a view to revising *Code*, in 2005 a wiki was created that contained the whole text of the original publication. Users were encouraged to edit content, make revisions and add comments.

Code: and Other Laws of Cyberspace Version 2.0 was published in 2006 based on these changes and additional amendments by Lessig.⁹ Upon publication a new wiki was created for *Code v2*.¹⁰ Today, Lessig has also created a wiki allowing collaboration on broader legal issues ranging from corruption to perpetual copyright.¹¹

In a similar vein, following the 2006 publication of *The Wealth of Networks: How Social Production Transforms Markets and Freedom*,¹² author Yochai Benkler created a wiki for the book, well within the spirit of a text on social and peer-production.¹³ Today the wiki contains different versions of the publication (the online version is licensed under a Creative Commons Attribution-Noncommercial-ShareAlike licence¹⁴), reviews and blog commentary, video and audio resources, in addition to a wiki version of the text. This wiki version of *The Wealth of Networks* contains user-created summaries of the chapters and comments on the text.¹⁵

In both cases, the creation of wikis by Benkler and Lessig has allowed a broader audience to interact with what might otherwise be seen as relatively complex and inaccessible legal issues and arguments. Yet this is only one way in which wiki technology is being harnessed in the development of law.

Wikis and the Teaching of Law

Legal studies are not usually considered to be collaborative in nature. For many law students their time studying law, whether at the undergraduate, graduate or postgraduate level, will be dominated by the preparation of individually-written essays and exams. Group participation would perhaps be limited to in-class exercises, although there are exceptions. In turn, the wiki model takes group participation in a law school context that one step further.

As has been noted by Dutch academics Esther Hoorn and Dore van Hoorn, “[a] wiki-environment offers students the opportunity to use advanced communication methods in their learning process, and to collaborate in the process of reflecting

on the use of legal resources.”¹⁶ Hoorn and van Hoorn have further stated that they “assumed it [the use of a wiki in a law school context] might help to get the Internet-generation engaged in legal scholarship.”¹⁷ Such a statement is quite accurate: the law students of today, both in Australia and globally, are more digitally literate than previous generations. Many students would arguably feel more capable of online research and writing rather than offline library-based methods. Students may also have experience editing a wiki, on Wikipedia or elsewhere. As such, a wiki can be a useful tool in a legal education course.

United States academic Tom Cobb, in creating a course designed to highlight the public interest benefits in the practice of law, utilised a wiki as a means of allowing a class to gather and integrate materials.¹⁸ Cobb praised the benefits of the wiki model and highlighted the positive use of this model for transforming the writing of law students. Cobb has written:

Wikis have the potential to facilitate this professional transformation because they offer a real, albeit indistinct, audience that includes students in the classroom and other community members working on the project, but could also extend to much more general audiences. Students *are* “publishing” when they write on a wiki. (emphasis in original, citation omitted)¹⁹

An online digital forum appeals to modern-day law students. Class collaboration does not appear to hinder the development of the traditional skills acquired in the course of a legal education. Rather, it enhances the acquisition of those skills in a familiar digital environment.

Wikis and the Development of Law

Non-governmental participants have something more to offer than voting once a year – namely, good information. In much the same way that we devise legal procedures to ensure fairness in the courtroom or open deliberation in Congress, we can design technology – and the legal and policy framework to support it – that elicits specific, structured, and

manageable input, not from individuals, but from collaborative groups.

- Beth Simone Noveck²⁰

In 2007 the New Zealand Government made global news when it launched a wiki with a view to providing the community the opportunity to collaborate on the development of a new policing law.²¹ This was not the first use of a wiki by a NZ Government organisation to encourage greater engagement with the community,²² but it was the first time that one had been used in the course of the creation of a law.

That wiki was just a part of the overall review into the *Police Act 1958* (NZ), but was designed to attract input from the broader community. New Zealand Police Superintendent Hamish McCardle noted that “[t]his may well be one of the first pieces of legislation developed in New Zealand with the aid of such an online tool.”²³ It might have been one of the first examples of legislation *worldwide* that was developed in part using a wiki.

The wiki was overseen by the Police Act Review Team and featured lists of “good behaviour” and “bad behaviour” as guidelines on wiki-etiquette.²⁴ Bad wiki behaviour included “racist, hateful, sexist, homophobic, slanderous, insulting, or life-threatening messages” and “messages written in a language other than English or Māori”.²⁵

The wiki was closed in October 2007 but the full “wiki Act” version of the proposed Policing Act 2008 remains online on the Police Act Review Wiki page.²⁶ The “wiki Act” contains seven parts and each section contains alternative views and notes, where available, to the settled provisions. For example, the section titled “Acknowledgement Of Police Role in Policing” lists the various roles and functions of police officers, including “law enforcement”, “community support and reassurance” and “protecting national security, including by participation in international policing activities”.²⁷ Several alternative views and

comments are provided, including suggestions that “[p]olice should not be involved in day to day traffic duties” and “[p]olice should however be limited in their response to someone defending their own home or business”.²⁸ It is useful that these alternative views remained with the wiki provisions as indicators of what members of the community considered significant as part of re-drafting this law.

Thus, in this example, wiki technology was designed to do precisely what Noveck suggested in the opening paragraph to this section. It provided a non-traditional but arguably efficient means of gathering information and suggestions on the law from the broader community. Certainly a wiki is not the only way that a governmental committee charged with reviewing a law can gather information from the public: for example, in Australia, many parliamentary reviews seek submissions from the public asking for comment on a law. However, in the New Zealand case, the wiki model for seeking comments provided an attractive alternative for several reasons.

This was the first time a wiki was used to seek this type of input. Aside from any issues of content, or indeed law, the use of a wiki as a method of seeking public input was newsworthy in itself, and gathered additional publicity for the review. Further, however, and aside from the novelty factor, an online wiki is a very modern and democratic method of gathering input from the community who may not be otherwise be inclined to commenting on a law. An individual or a group could make as large or as small a contribution as they wished to the drafting of the law, without the logistical issues of creating a formal submission to a government body.

Other issues also need to be resolved: for example, the fact that not all individuals have access to a computer or the Internet. However, so long as other methods for participatory law reform remain, there is no reason why wikis cannot be further harnessed in

the future as part of the creation and deliberation of legislation.

Conclusion: Australian Possibilities

Given that it was only at the last Australian Federal Election that many politicians began actively engaging with the Internet as a means of informing and influencing voters, it is perhaps too soon to predict an Australian-based legal wiki. However, there is some evidence to suggest that an Australian open online democracy may happen in the future – possibly by 2020. At the recent 2020 Summit,²⁹ where 1000 of Australia’s leading minds met to consider ideas for the future of Australia, summit attendees suggested the creation of a website called ‘ourgov.com.au’, described as “an online portal that opens the world of government to citizens”.³⁰ This portal would be similar in nature to directgov.co.uk, a website managed by the United Kingdom government providing online access to all manner of government information.³¹

The proposed website is not as interactive – and indeed not as democratic – as a wiki-based model. However, as this article has illustrated, should the Australian Government choose to actively pursue an online forum for engaging with the wider community, a wiki-based site may be a suitable method.

¹ See Wikipedia, ‘Wiki’ @ <<http://en.wikipedia.org/wiki/Wiki>> at 16 June 2008.

² See ‘Welcome Visitors’ @ <<http://c2.com/cgi/wiki?WelcomeVisitors>> at 16 June 2008; ‘WardsWiki’ <<http://c2.com/cgi/wiki>> at 16 June 2008.

³ Wikipedia, ‘List of wikis’ @ <http://en.wikipedia.org/wiki/List_of_wikis> at 16 June 2008.

⁴ See Citizendium @ <http://en.citizendium.org/wiki/Main_Page> at 16 June 2008.

⁵ See Lostpedia @ <http://www.lostpedia.com/wiki/Main_Page> at 16 June 2008.

⁶ See Wookiepedia @ <http://starwars.wikia.com/wiki/Main_Page> at 16 June 2008.

- ⁷ As of 16 June 2008, Wookiepedia contained 57, 384 articles. See *Ibid*.
- ⁸ Lawrence Lessig, *Code and Other Laws of Cyberspace* (1999, Basic Books, USA).
- ⁹ See 'Code v2 by Lawrence Lessig' @ <<http://codev2.cc/>> at 16 June 2008.
- ¹⁰ See Code 2.0 @ <<http://www.socialtext.net/codev2/index.cgi>> at 16 June 2008.
- ¹¹ See 'Main Page – Lessig Wiki' @ <http://wiki.lessig.org/Main_Page> at 16 June 2008.
- ¹² Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (2006, Yale University Press, USA).
- ¹³ See 'Main Page – WikiNotes' @ <http://www.benkler.org/wealth_of_networks/index.php?title=Main_Page> at 16 June 2008.
- ¹⁴ See 'Creative Commons Attribution-Noncommercial-Share Alike 2.5 Generic' @ <<http://creativecommons.org/licenses/by-nc-sa/2.5/>> at 16 June 2008.
- ¹⁵ See 'Table of Contents – WikiNotes' @ <http://www.benkler.org/wealth_of_networks/index.php?title=Table_of_Contents> at 16 June 2008.
- ¹⁶ Esther Hoorn and Dore van Hoorn, "Critical assessment of using wikis in legal education" [2007] 1 *Journal of Information Law & Technology* at [4] @ <http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2007_1/hoorn> at 16 June 2008.
- ¹⁷ *Ibid*, at [8].
- ¹⁸ Tom Cobb, "Public Interest Research, Collaboration, and the Promise of Wikis" (2007) 16(1) *Perspectives: Teaching Legal Research and Writing* 1 @ <<http://ssrn.com/abstract=1104322>> at 16 June 2008.
- ¹⁹ *Ibid*, at p. 7.
- ²⁰ Beth Simone Noveck, "Wiki-Government", Winter 2008, Issue 7, *Democracy Journal.org*, 31, at p. 34 @ <<http://www.democracyjournal.org/article.php?ID=6570>> at 16 June 2008.
- ²¹ See 'Police Act Review Wiki' @ <<http://wiki.policeact.govt.nz/>> at 16 June 2008; Cory Doctorow, "New Zealand puts its law on a wiki for public editing", *BoingBoing*, 26 September 2007 @ <<http://www.boingboing.net/2007/09/26/new-zealand-puts-its.html>> at 16 June 2008; Arjun Ramachandran, "Write your own laws", *The Sydney Morning Herald*, 26 September 2007 @ <<http://www.smh.com.au/news/web/new-wiki-to-stop-the-wicked/2007/09/26/1190486375202.html>> at 16 June 2008; "NZ police let public write laws", *BBC News*, 26 September 2007 @ <<http://news.bbc.co.uk/2/hi/asia-pacific/7015024.stm>> at 16 June 2008.
- ²² See 'Policing Act "wiki" launched', 25 September 2007 @ <<http://www.policeact.govt.nz/news-releases/policing-act-wiki-launched.html>> at 16 June 2008; 'Main Page – ParticipatioNZ' @ <http://wiki.participation.e.govt.nz/wiki/Main_Page> at 16 June 2008.
- ²³ See 'Policing Act "wiki" launched', 25 September 2007 @ <<http://www.policeact.govt.nz/news-releases/policing-act-wiki-launched.html>> at 16 June 2008.
- ²⁴ See 'Police Act Review Wiki – Main – About' @ <<http://wiki.policeact.govt.nz/pmwiki.php/Main/About>> at 16 June 2008.
- ²⁵ *Ibid*.
- ²⁶ See 'Police Act Review Wiki – Policing Act 2008' @ <<http://wiki.policeact.govt.nz/pmwiki.php/PolicingAct2008/PolicingAct2008>> at 16 June 2008.
- ²⁷ See 'Police Act Review Wiki – Policing Act 2008 – Acknowledgment of Police Role in Policing' @ <<http://wiki.policeact.govt.nz/pmwiki.php/PolicingAct2008/AcknowledgementOfPoliceRoleInPolicing>> at 16 June 2008.
- ²⁸ *Ibid*, 'Alternative views'.
- ²⁹ See 'Australia 2020' @ <<http://www.australia2020.gov.au/>> at 16 June 2008.
- ³⁰ Ruth Pollard, "Republic cheered in fight for rights", *The Sydney Morning Herald*, 21 April 2008, @ <<http://www.smh.com.au/news/national/republic-cheered-in-fight-for-rights/2008/04/20/1208629731331.html>> at 16 June 2008.
- ³¹ *Ibid*. See 'Website of the UK government: Directgov' @ <<http://www.direct.gov.uk/en/index.htm>> at 16 June 2008.