

INTERNET AND JURISDICTION: WHAT ARE THE CHALLENGES FOR THE BORDERLESS INTERNET?

The constant flux of digital innovation and the transnational nature of the Internet make it increasingly difficult to address online abuses with traditional national legal tools. The Internet & Jurisdiction Global Status Report (2019) addresses the issue of how to handle the coexistence of heterogeneous laws on the cross-border Internet. The report combines detailed desk research with a pioneering data collection from already over 100 key stakeholders of the Internet & Jurisdiction Policy Network, including states, Internet companies, technical operators, civil society, academia and international organizations.

Around 80% of stakeholders think that there is not sufficient international coordination and coherence to address cross-border legal issues on the Internet. The results also show there is greater access to sufficient information about relevant actors and initiatives, than to information about the details of relevant laws and their application, or to relevant court decisions. Experts surveyed conclude that the work of academics does not effectively reach the other stakeholder groups, which indicates that options for this transfer of knowledge need improvement. More than half of the interviewees are of the opinion that there are not appropriate frameworks and standards in place to address cross-border legal challenges on the Internet. This is a grave concern for the international community, as these challenges will only become more acute in the next three years. The data collected confirms the widely recognized opinion that the Internet is a fragile environment that must be actively protected. Two characteristics have to be preserved - the Internet's cross-border and permission-less nature – both of which are currently under threat. In particular, by removing barriers to entry, the permission-less nature of the online medium has been a great facilitator of innovation and this potential should be consistently safeguarded.

The report also draws attention to several outstanding trends that are central to any discussion of the cross-border legal challenges on the Internet.

One of the most important tendencies relates to the regulatory framework that should be established. As several experts have rightly pointed out, technology in the contemporary context acts not only as an object of regulation, but as a regulatory force itself. This means that technology competes with law as a regulatory force and puts significant stress on the law as such. More specifically, the law-making apparatus and the legal concepts, some of which are difficult to transpose onto the online environment, demand a degree of future-proofing.

While there is a clear trend of recognition that legal regulation is necessary, a proliferation of initiatives signals that the cross-border legal challenges on the Internet are being taken seriously, perhaps more so than ever before. Yet the measures

implemented suffer from a lack of coordination and cooperation. This only compounds the difficulties arising from information overload and information access problems. Related to this is the increasing geographic reach of national laws representing the only tools to address transnational issues. Currently, the regulatory environment is clearly swinging toward jurisdictional over-regulation. The problems which stem from such an approach create complications with enforcement.

While legislation is largely relied upon to create trust in online commercial transactions, blockchain-based smart contracts may increasingly act as a competitor in some areas - even if the law remains an underlying facilitator of the trust created by smart contracts.

To emphasize the role of legislation for the regulation of networks does not imply the era of self-regulation is over. The domain name system is often cited as a prime example of successful self-regulation which continues to be a reliable regulatory instrument.

Increasingly, the complexity of the role of Internet intermediaries is becoming paramount. The report makes the observation that intermediaries can wittingly or unwittingly take many roles - in some instances, these intermediaries are self-proclaimed gatekeepers; in others, they are involuntary gatekeepers. Internet intermediaries fulfill quasi-judicial functions in a variety of contexts. Sometimes this happens voluntarily and other times such a role is forced upon them. In many cases, they are simply scapegoats and 'easy' targets for litigation and content restriction orders. The report recommends the role of Internet intermediaries to be approached with fresh eyes, free from preconceived notions based on comparisons with the roles of offline intermediaries.

These tendencies in the contemporary digital environment suggest that there ought to be a clear political will -- and unquestioned economic and social justifications - to decisively tackle the challenges faced in the context of Internet jurisdiction.



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