INTERNET LAW SESSION 1

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18 OCTOBER 2019

WELCOME TO TRANSNATIONAL INTERNET LAW!

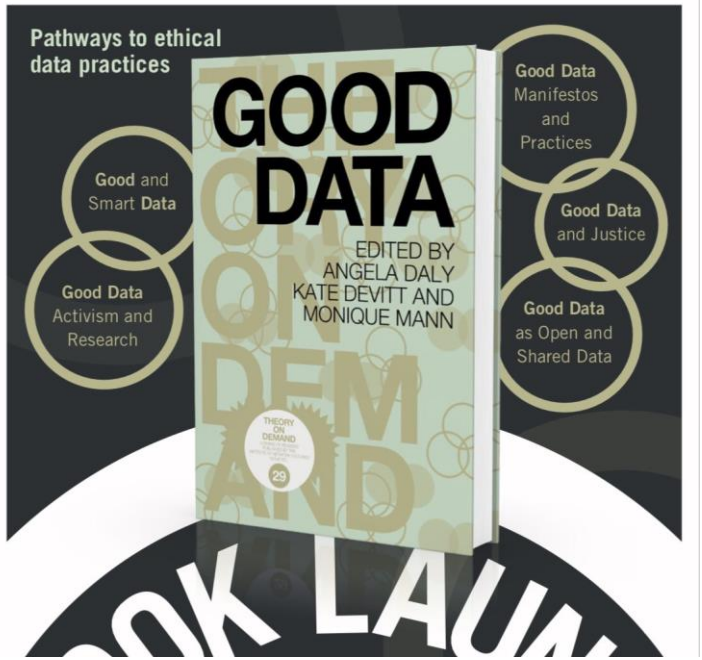
OVERVIEW OF THIS SESSION

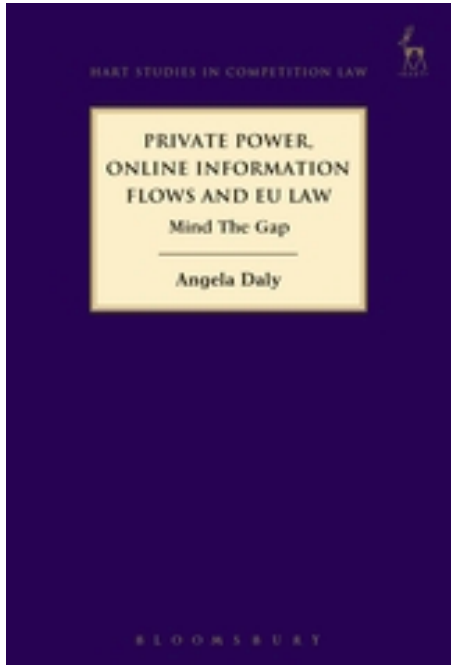
Introductions: to me, to you, and to the course

What is Internet Law?

PART I

INTRODUCTIONS





MY INTERNET LAW BACKGROUND: ACADEMIA/POLICY/ACTIVISM

INTRODUCE YOURSELVES TO ME!

01

What year of study are you in?

02

What motivates you to study Internet Law?

03

Have you studied a similar topic before?

04

What do you hope to gain from this course?

COURSE SCHEDULE PART 1 – OCTOBER 2019

Class 1	Introduction	18 October 2019
Class 2	Transnational Internet issues	18 October 2019
Class 3	Digital IP and domain names	21 October 2019
Class 4	Free speech and content moderation	21 October 2019

COURSE SCHEDULE PART 11 – NOVEMBER 2019

Class 5	Privacy & Surveillance	15 November 2019
Class 6	Cybercrime	18 November 2019
Class 7	Future outlooks for Law & Internet Technology/Conclusion	18 November 2019

PART I

WHAT IS INTERNET LAW?

EXERCISE

1. Read:
   - Easterbook – Cyberspace and the Law of the Horse
   - Murray – Looking Back at the Law of the Horse: Why Cyberlaw and the Rule of Law are Important

2. Prepare answers:
   - What is the main argument of each author?
   - What aspects of Internet Law are not addressed by Easterbrook?
   - Is introducing 'rule of law' aspects enough to make Internet Law a 'proper' legal discipline?
   - Reflect on your previous law study. Do you think Internet law/cyberlaw is a distinct area of law or not compared to e.g. contract law? In e.g. contract law did you study how the Internet has changed contracts?
   - Is the fact that you are doing an Internet Law course now 20+ years after Easterbrook's article proof that Cyberlaw is more than the Law of the Horse?

QUESTIONS?

THEORIES OF INTERNET REGULATION

WHAT IS THE INTERNET?

- https://www.youtube.com/watch?v=Dxcc6ycZ73M
- 'network of networks' – decentralised interconnected computer networks that use the Internet protocol suite (TCP/IP) to link devices worldwide
- Grew out of US government-funded research and a particular predecessor network, ARPANET
- Commercial Internet Service Providers began to emerge in 1980s/early 1990s
- By mid 1990s, the Internet has been formally opened up for commercial purposes and uses
- World Wide Web – developed in early 1990s – an example of an Internet application; see also: VoIP, email, livestreaming etc

THE INTERNET CAN BE DIVIDED CONCEPTUALLY INTO 3 LAYERS

1. **Infrastructure layer** (network cables, routers, protocol) – physical infrastructure which typically passes data from one node to another and does not (usually) interfere with the data content
2. **Code layer** – software that operates at the ends of the network to interact with users eg web pages, chat apps
3. **Content layer** - this is the material that is transmitted over the network infrastructure, selected and presented by code – usually this is the layer that we visibly interact with when we use the Internet

INTERNET AS FREEDOM ENHANCING

- The Internet emerged for the general public in the 1990s – fall of the Soviet Union, 'end of history', triumph of liberal democracy
- Cyberlibertarians – denied the authority and ability of nation-states to regulate cyberspace
- Web 2.0 and social media – a new era of freedom for citizens – Arab Spring

REGULATING INFRASTRUCTURE

"The Net interprets censorship as damage and routes around it." John Gilmore

If there is a problem with one connection in the network, data can find another way to travel to avoid that connection – this makes sense as the Internet was designed to be resilient.

The Great Firewall of China (and other similar measures in other countries) is a way of regulating the infrastructure layer – but even it isn't 100% effective since people can use Virtual Private Networks to get around censorship.

REGULATING CODE – OR CODE WHICH REGULATES US

- https://www.youtube.com/watch?v=EXOv1doHp88

REGULATING CONTENT

Regulating the layer which we mostly see when we use the Internet

Most (but not all) regulatory concerns arise at this level – governments in particular have a strong concern about the content people send/receive/see e.g. copyrighted/defamatory/criminal content, free speech/political issues, hate speech/cybersafety

JOHN PERRY BARLOW – DECLARATION OF THE INDEPENDENCE OF CYBERSPACE (1996)

"Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.... I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. **You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear."**

- Suzor: 2 elements – the Internet is unregulable by governments; it is not legitimate for governments to regulate the Internet even if they can.

MURRAY'S 3 THEORIES OF INTERNET REGULATION

Self-regulation

Design-based regulation

Community based regulation

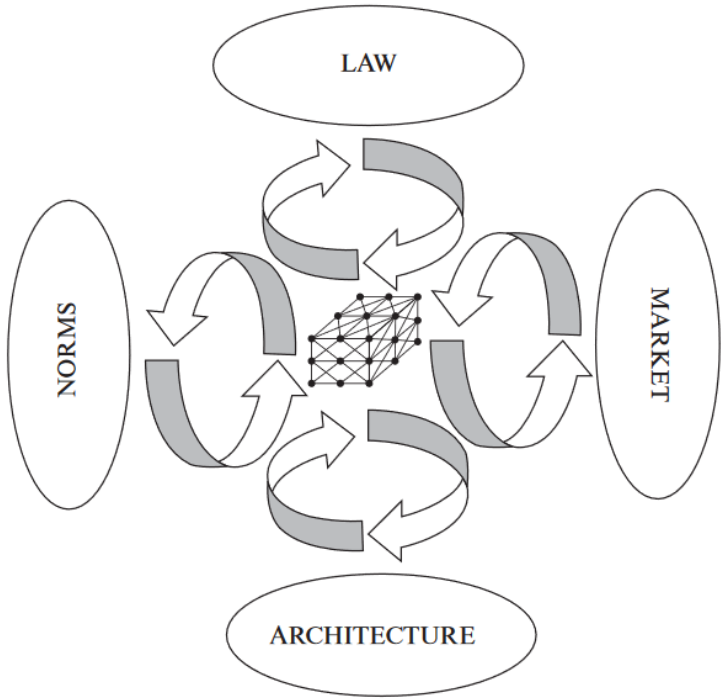
1. SELF-REGULATION

- De-territoriality and unique micro-community structure made the Internet unsuitable for traditional, nation-state based regulation- Cyberlibertarians in 1990s
- Borderless nature of the internet = no ability for governments to effectively enforce their laws, assumption that enforcement stops at territorial borders
- This was critiqued by many, pointing to the international aspects of law in late 20th century eg law of the sea, aviation law, human rights, environmental law – see Jack Goldsmith's work, esp *Who Controls the Internet? Illusions of a Borderless World* book with Tim Wu
- Cyberlibertarians seems to envisage that instead of 'normal' law, self-regulating codes would emerge for cyberspace communities, similar to *lex mercatoria* in medieval Europe among sea traders

2. DESIGN-BASED REGULATION

- ‘cyberpaternalist’ school
- Governance through changes at the infrastructure/code layers of the Internet
- Idea that standards may be applied by technical processes AND effective and legitimate law may be affected without a jurisdictional foundation
- Lessig – Code is Law
- Also Lessig – all regulation is a mixture of the direct and the indirect – i.e. direct regulation of individuals’ behaviour and indirect regulation of intermediaries
- Code is a potentially perfect, covert regulator – problematic from an individual autonomy perspective – for Lessig and others, the solution is more transparency and scrutiny for online and offline law making

3. COMMUNITY-BASED REGULATION



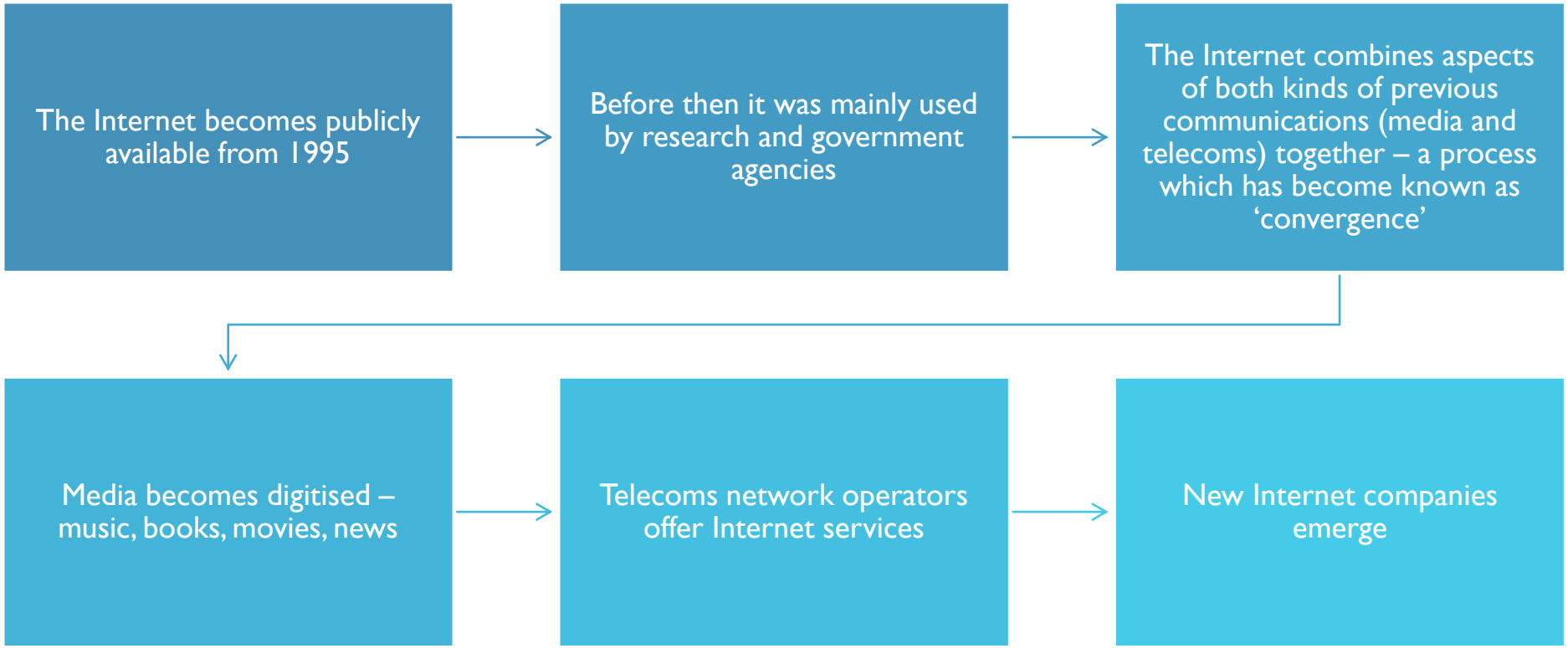
- 'Network Communitarian' School
- Murray himself subscribes to this school of thought
- Lessig's law, norms and markets are a proxy for community-based control
- Regulatory process is a dialogue rather than externally imposed
- Regulation in the online environment is not so different to the 'real world'
- The regulatory settlement evolves to reflect changes in society

CHRISTOPHER MARSDEN – INTERNET CO-REGULATION

- Broad division of Internet regulation (in UK/EU) into self-, co- and state-regulation forms
- What is co-regulation?
  - 'the regulatory regime is made up of a complex interaction of general legislation and a self- regulatory body'
  - 'refers to forms of hybrid regulation that do not meet the administrative and statute-based legitimacy of regulation, yet clearly perform some elements of public policy that cannot be ascribed to self-regulation, in the absence of the nation-state or European law.'
  - Involves multiple stakeholder groups which may enhance legitimacy – but less gov involvement may decrease legitimacy
- 'European examples of co-regulation now abound in this field, notably in Internet security but also in child safety and filtering, as well as standard setting and social network privacy regulation.'

CONVERGENCE AND REGULATION

1990S: INTERNET AND CONVERGENCE



IMPACT OF CONVERGENCE FOR REGULATION

New media and Internet did not fit well into previous laws and policy frameworks

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In many countries, there were different government agencies to regulate different kinds of media e.g. one for TV, one for radio, one for movies etc; there would also be a different agency to regulate telecommunications

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Which agency/agencies were responsible for regulating the Internet? What laws should they apply? What policy principles should they use?

↓

This was a big question for governments in the 1990s

EMERGENCE OF CONVERGED REGULATORS

Amalgamation of public regulatory bodies which previously focused on one domain e.g. telecoms, broadcasting

Examples: OFCOM in UK; AGCOM in Italy

These regulators usually have the most impact re Internet regulation via regulating the telecoms networks over which Internet communications are made (although they may have some impact regarding broadcasting standards in internet or mobile TV services)

GLOBALISATION OF COMMUNICATIONS

- The Internet has presented a much more globalised communications medium than previous TV, radio, telecoms
- We have seen the rise of transnational technology companies, especially from the United States, providing a lot of Internet services (especially outside of China)
- But – communications regulation mainly happens at a national level; sometimes at the regional level (e.g. European Union)
- This is a challenge for national regulators and national communications policy
- We have different policies in different countries – but services which are globalised

REGULATING GLOBALISED COMMUNICATIONS

- There is a United Nations body called the International Telecommunications Union which sets some global standards for communications
- But it has not had a strong role in regulating the Internet
- Some countries including China have suggested the ITU should have a bigger role in Internet regulation; but this has been opposed by Western countries especially the US
- Currently we do not have truly international regulation of the Internet

REGIONAL INTERNET REGULATION?

Large and rich countries or regions can ensure their laws, regulations and policies are enforced against transnational Internet companies

The United States, European Union, China, India and Russia have, to varying degrees, managed to do this

But – smaller countries may have more problems in getting large transnational companies to respect their laws

IN SUMMARY

- Various factors and features of the internet have influenced the thinking about how it is regulated
- Internet exceptionalism – transnational, virtual etc – how different is the Internet really from other phenomena in society?
- Different approaches/models of Internet regulation – between US, EU, China etc etc etc
- No one entity which governs the whole Internet and no formal international law of the whole Internet
- Key questions about whether and how to regulate on the one hand, and how effective regulation will be on the other hand- also descriptive/normative distinctions in approaching Internet law issues
- It may be impossible because of the Internet's decentralised nature for a government to have 100% effective regulation – perhaps we should think more about the empirical reality of effective regulation as a matter of degree
- What does Internet law/regulation mean when the Internet is embedded in everything - hyperconvgerence

THANK YOU

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