

*ICANN jurisdiction
and private
international law –
Internet governance
by contract?*

Private International Law????

- Also called “Conflict of laws”
- Part of domestic law
- Procedural rather than substantive
- **Four elements:**
 1. **Jurisdiction**
 2. **Choice of law**
 3. **(Declining jurisdiction)**
 4. **Recognition and enforcement.**

Private international law and ICANN contracts:

5.2 Arbitration [...] In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

Alternative Section 5.2 [...] In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

Jurisdiction based on the “location” of a domain name:

- In some countries, a court may be given jurisdiction based on the domain name being “located” in that country by reference to the location of the registry or the registrar being based there. (e.g. *Office Depot, Inc. v. Zuccarini*, Case No. 07-16788 (9th Cir., Feb. 26, 2010))

Private International Law ousted by contracts: Uniform Domain-Name Dispute-Resolution Policy

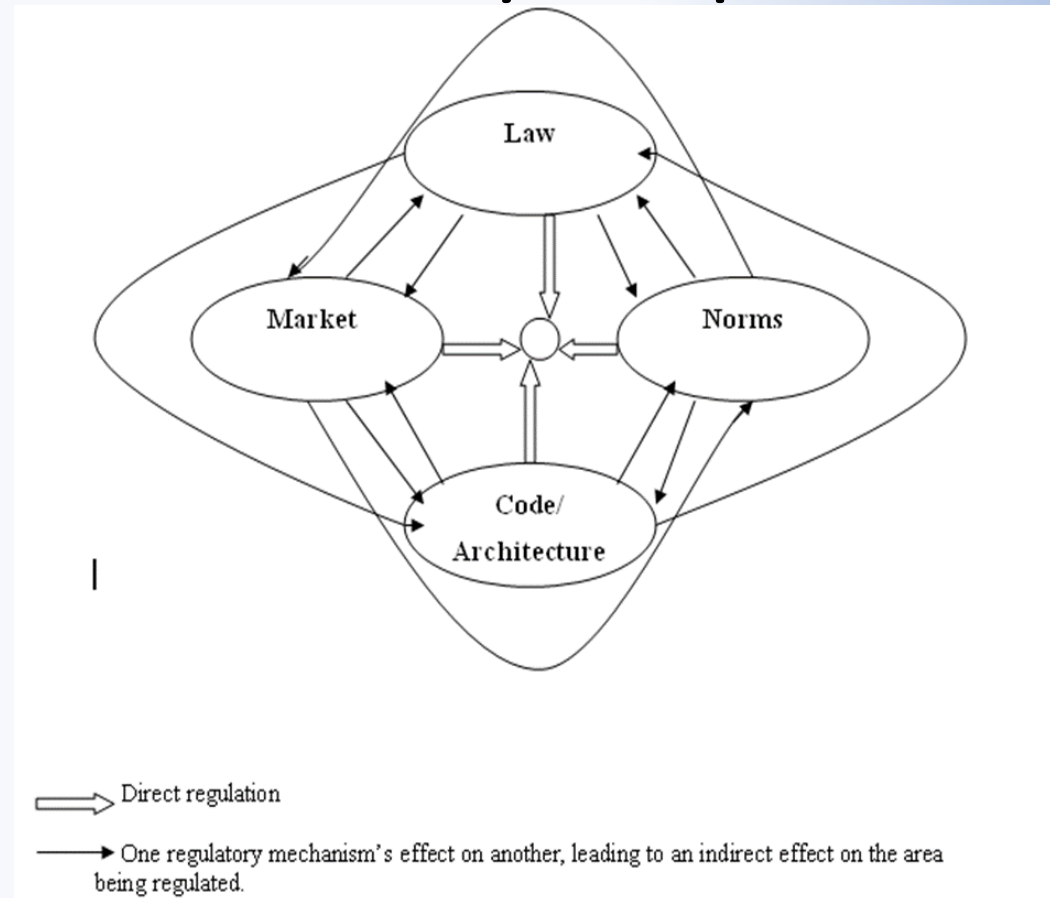
- **Four elements:**

1. **Jurisdiction - via contract**
2. **Choice of law - via contract**
3. **(Declining jurisdiction) - via contract**
4. **Recognition and enforcement - via contract / technical control**

“Where tools such as the UDRP – with its almost complete exclusion of international law – become the model of choice for Internet regulation, international law will struggle to find its relevance in shaping the online environment. I think that would be a lost opportunity.” (Svantesson, IS INTERNATIONAL LAW READY FOR THE (ALREADY ONGOING) DIGITAL AGE: PERSPECTIVES FROM PRIVATE AND PUBLIC INTERNATIONAL LAW, Royal Netherlands Society of International Law, Collected Papers 147)

Lessig: Code and other laws of Cyberspace:

- Lawrence Lessig: Law, Norms, Market and Architecture all effect each others' regulatory influence:
- **BUT WHAT ABOUT CONTRACTS?** (see Bygrave, *Internet Governance by Contract* (OUP 2015))

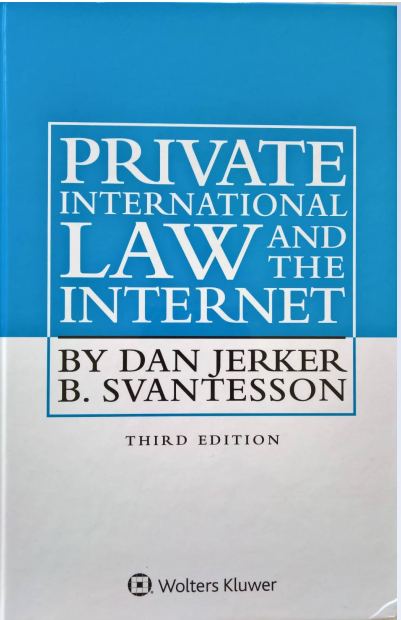


DNS Abuse: Two paths to (the same) outcome(s)

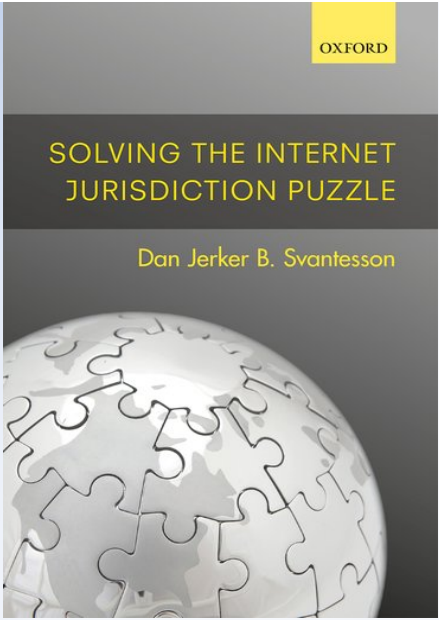
	Court order	ICANN Contracts
Jurisdiction	Guided by international law	Self-contained via terms of the contract
Choice of law	Courts apply local law in public law matters / complicated by divergent legal standards	Self-contained via terms of the contract
Judicial credibility/trust/transparency	Yes	No
Global scope	Not necessary	By necessity
Enforcement within immediate power of decisionmaker	No	Yes
Perceived concern due to global impact	Big	Limited (so far)

ONE KEY MESSAGE:

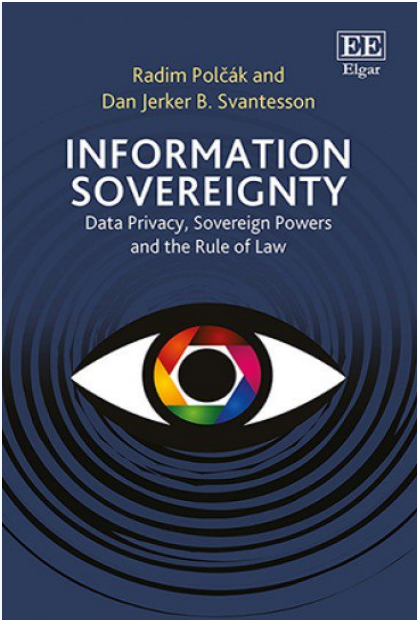
The Internet is neither the problem, nor is it the cause of the problem. The Internet risks becoming the victim.



2016



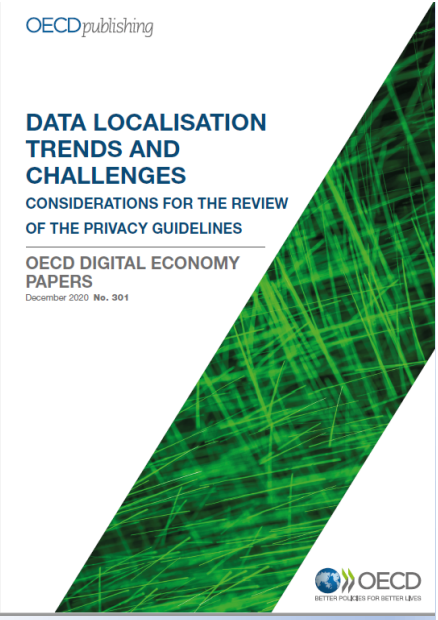
2017



2017



2019



2020

**WARNING:
Self-promotion**

Thank you!

Dan Svantesson
dasvante@bond.edu.au