

Internet Jurisdiction & Public International Law

Uta Kohl

Professor of Law, University of Southampton

Trends in Internet Jurisdiction

(1) Prescriptive jurisdiction

Wider regulatory expectations on a smaller group of global actors

(2) Enforcement jurisdiction

Greater reliance on a small group of global actors for preserving local law space

(3) Broad underlying shifts in substantive regulation

- From political/moral repercussions to economic impacts
- From reactive to proactive duties
- From information to data
- From intermediaries per se to key platforms

Shifts in the Substantive Regulation of the Net

From political/moral content regulation to economic effects

eg. Treasury Laws Amend (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 – [Facebook bans Australians from seeing or posting news](#)

From reactive to proactive duties (dwindling immunities)

eg. Art 17 of the Copyright in the Single Digital Market Directive 2019

Art 17(3) When an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in this Directive, the limitation of liability established in Article 14(1) of Directive 2000/31/EC shall not apply to the situations covered by this Article.

From information/content to data

eg. *Data Protection Commission v Facebook Ireland and Maximillian Schrems* C-311/18 (CJEU 16 July 2020) - [Facebook says it may quit Europe over ban on sharing data](#)

Microsoft Corp v United States 829 F3d 197 (2d Cir 2016) & the Clarifying Lawful Use of Data Act (CLOUD Act) 2018

Prescriptive Jurisdiction

Wider regulatory expectations on a small group of global actors
regulation of platforms

Germany Network Enforcement Law (2018) – 24hr or 7day takedown obligations on **platforms with more than 2 million users in Germany**

France Décision n° 2020-801 DC du 18 juin 2020 (18 June 2020, Constitutional Court) on the law combating illicit content on the internet – 1hr or 24hr takedown duty on any online company

UK *Online Harms White Paper* (2019) - statutory duty of care re ‘harmful’ content – would apply to any company that provides ‘services to UK users’

European Union

European Commission, *The Code of conduct countering illegal hate speech online* (2016, together **with four major IT companies**: Facebook, Microsoft, Twitter and YouTube)

Art 17 (initially Art 13) of the Copyright in the Digital Single Market Directive 2019/790 – proactive duty to prevent copyright breaches and pay for licences before sharing content - applicable to **‘online content-sharing service providers’... with ‘large amounts of copyright-protected works’** (Art 2)

Australia [Treasury Laws Amend \(News Media and Digital Platforms Mandatory Bargaining Code\) Bill 2020](#) – **‘designated digital platform corporations’** (s.52C) must agree to pay for sharing news content

Enforcement Jurisdiction

Greater reliance on a small group of global actors for preserving local law space
regulation through platforms

Blocking OR notice-and-takedown duties and proactive monitoring of third-party content

Overlap with prescriptive jurisdiction - platforms are used as law enforcement vehicles

eg. Network Enforcement Law (2018) => Law for improving the enforcement of laws on social networks

Google v CNIL C-507/17 (CJEU, 24 Sept 2019)

Right to be forgotten to be implemented on European domains and, as far as feasible, in relation to users on European territories

State access to corporate data sets (and stopping other States from accessing such data)

Microsoft Corp v United States 829 F3d 197 (2d Cir 2016) & the Clarifying Lawful Use of Data / CLOUD Act 2018

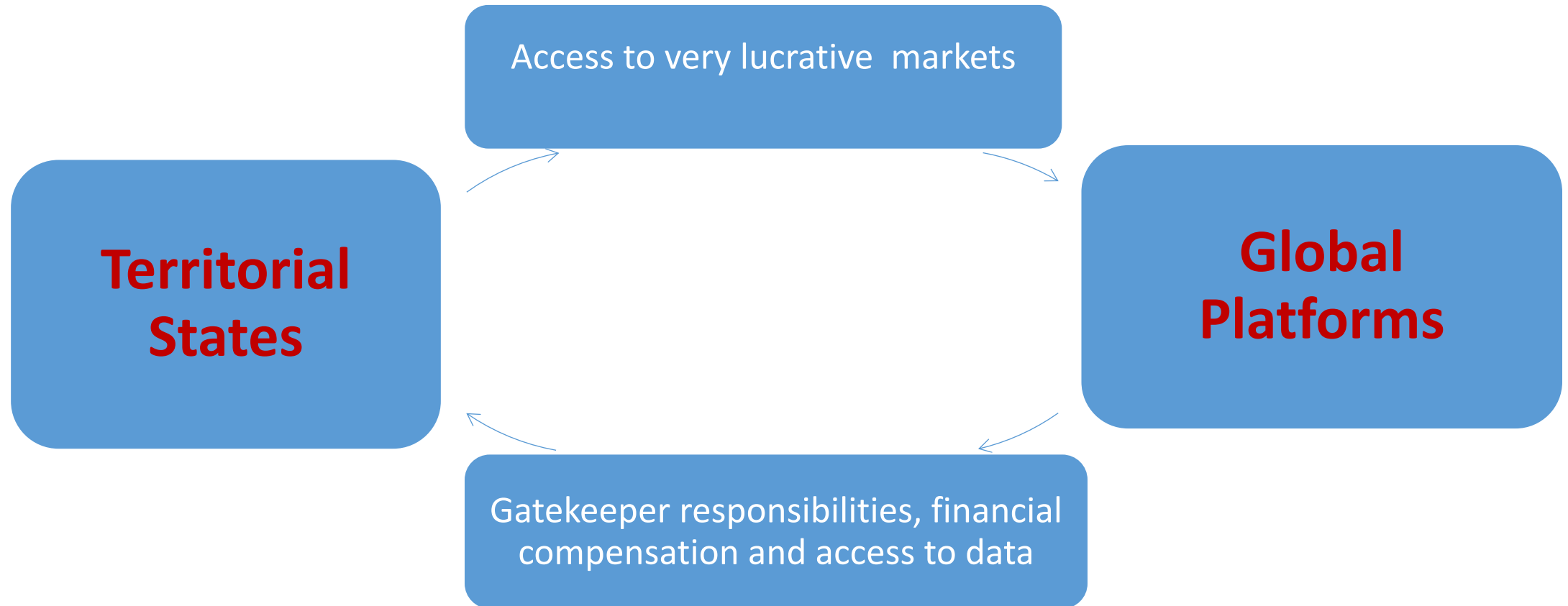
Data localisation laws e.g. GDPR (& Privacy Shield) or Russia's Data Localisation Laws

Data Protection Commission v Facebook Ireland and Maximilian Schrems C-311/18 (16 July 2020) - Privacy Shield invalidated

US: [Amazon's doorbell Ring is working with the police](#) (2019); [Police can search public genealogy site](#) (2019)

Territorial States and Global Platforms

- a Faustian Pact? and tit-for-tat?



thank you