

# Internet Jurisdiction & Public International Law

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# 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 *to* data**

eg. *Data Protection Commission v Facebook Ireland and Maximillian Schrems* C-311/18 (CJEU 16 July 2020)

*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 7-day 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 agree/pay for licences before sharing content

**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 European territory

## **State access to corporate data sets (or stopping access)**

*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