

International Law

Academic year 2020-2021

Internet Governance: the Role of International Law

DI014 - Printemps - 6 ECTS

Friday 10h15 - 12h00

Course Description

The Internet has made us freer, better informed, more connected. And more vulnerable. Born out as a happy, naive cyberspace unshackled from governments and conventional regulation, throwing disapproving lawyers anchored in territory into dismay, it became the means of our lifestyle. It also became the instrument of some of the world's darkest forces. How is it to be controlled? By whom? With what values and for what sort of societies? What role should international law play for it all? This is a survey course offering a critical overview of governance challenges and governance models for the internet. It examines general ways in which to think about, understand, and implement internet governance, and discusses the main areas of life in which this governance raises legal and ethical issues – from privacy, to e-commerce, to social media, to digital justice. How are we, as peoples, as individuals, to live with the internet, and how can international law help? No prior knowledge is required. Students in disciplines other than law are welcome.

> PROFESSOR

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> ASSISTANT

Hiruni Nadezhda Alwishewa

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Syllabus

(please see next page)

Instructions:

1. This course takes place every Friday, from 10:15 to 12:00 noon in Room S5. Potential changes in schedule or venue will be communicated via email or on Moodle.
2. Rather than offering an in-depth analysis of existing norms, the course seeks to (i) enable students to identify real-life challenges posed by rapid developments in information technology; and (ii) situate the role of international law or regulation more broadly in tackling such challenges. The course is therefore open to students from all disciplines and does not require prior knowledge of international law.
3. Assigned readings and background documents are available on Moodle.
4. Each session will be structured on the basis of 3-4 questions to be distributed ahead of each class. Students must be prepared to discuss and critically engage with the relevant issues raised.
5. The course is evaluated based on class participation and an in-class written exam. The criteria for evaluation of the exam are lucidity of reasoning, originality, exhibited capacity by the student to think by himself/herself, and overall substantive interest of answers.

Note: the preparatory questions for each class, which the students are to prepare ahead of class, are highly likely to be updated as the course proceeds. Any change will be posted in due time on Moodle.

Course structure:

Sessions 1 and 2: How the Internet Works (Friday 26 Feb. and Friday 5 Mar.)

The internet and cyberspace established a new, virtual context, characterized by ubiquity, global transnationalism and lack of tangible features, which transcends the confines of a traditional social context aligned to an established territorial community, within which people interact and communicate. Arguably, the internet creates a new paradigm of social construct which touches upon -almost- every aspect of peoples' activities, including transactions and e-commerce. As a result, the internet assumes a greater role and importance. In this context, a basic understanding of how the internet works, its inherent features and very nature is presupposed.

Themes:

1. What, technically, is the Internet, and why does its engineering matter?
2. A brief history of the Internet
3. Understanding how the internet (web, deep web, dark net, dark web etc.) works
4. Explore the different characteristics of the Internet
5. Importance of the Internet

Please prepare informal answers to the following questions:

1. Should the dark net be banned entirely?
2. What is the significance of the concentration of Internet technology in the west?
3. Is there territory of the internet?
4. There is much talk of net neutrality. What is it? Can the internet be really neutral?

Readings:

A. Required readings:

- i. <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1086&context=ncjolt> Thomas Schultz, "Does online dispute resolution need governmental intervention – the case for architectures of control and trust" *North Carolina Journal of Law & Technology* (2004) Volume 6, Issue 1, pp. 71-106

B. Optional readings:

- i. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1678343 Laura DeNardis, 2010, The Emerging Field of Internet Governance (*Yale Information Society Project Working Paper Series*)
- ii. https://www.academia.edu/37355582/Decentralisation_of_Internet_Governance "Decentralisation of Internet Governance" by Vlad Costea

Sessions 3 and 4: Models of Regulation (Friday 12 Mar. and Friday 19 Mar.)

Having explored the function, role and nature of the internet along with its social and economic significance, we turn on internet regulation. Given the specifics of the internet, how is it best regulated? What are the models of regulation proposed? Do the internet's inherent features pose a challenge to law-making? A discussion on internet regulation, the different regulatory models, the need for control and the role of international law within this context ensues.

Themes:

1. Suggested models of internet regulation
2. Proactive v. reactive internet regulatory regimes
3. Unified v. country-specific regulation
4. Advantages and disadvantages of proposed models of regulation

Please prepare informal answers to the following questions:

1. How is the Internet regulated?
2. Do we need to regulate the internet?
3. What public policy concerns are related to internet regulation and how can they be addressed?

Readings:

A. Required Readings:

- i. https://www.mpil.de/files/pdf3/06_antoniiov1.pdf Antonio Segura-Serrano, "Internet regulation and the role of international law" *Max Planck Yearbook of United Nations Law* (2006) Volume 10, pp. 191-272
- ii. <https://academic.oup.com/ijlit/article-abstract/13/1/39/717691?redirectedFrom=fulltext> Dan Jerker B. Svantesson, "The characteristics making Internet communication challenge traditional models of regulation-What every international jurist should know about the Internet" (2005) Volume 13 Issue 1 *International Journal of Law and Information Technology*, pp. 39-69

B. Optional readings:

- i. Héritier, Adrienne and Sandra Eckert. 2008. New Modes of Governance in the Shadow of Hierarchy: Self-Regulation by Industry in Europe. *Journal of Public Policy* 28(1), pp. 113–38
- ii. https://www.washingtonpost.com/opinions/mark-zuckerberg-the-internet-needs-new-rules-lets-start-in-these-four-areas/2019/03/29/9e6f0504-521a-11e9-a3f7-78b7525a8d5f_story.html Entry by Mark Zuckerberg on Internet Regulation, "The Internet needs new rules. Let's start in these four areas", *Washington Post* (30 March 2019)
- iii. <https://www.forbes.com/sites/nikitamalik/2018/09/07/the-internet-to-regulate-or-not-to-regulate/#5f5f36f21d16> Entry by Nikita Malik on Internet Regulation, "The Internet: To Regulate or Not To Regulate?", *Forbes* (7 September 2018)

- iv. <https://academic.oup.com/ijlit/article-abstract/19/3/243/695480> Dan Svantesson, “A legal method for solving issues of internet regulation” *International Journal of Law and Information Technology* (2011) Volume 19, Issue 3, pp. 243-263
- v. <https://arstechnica.com/tech-policy/2019/09/facebook-plans-launch-of-its-own-supreme-court-for-handling-takedown-appeals/> Entry by Kate Cox on ‘Facebook Appeal Court’, “Facebook plans to launch of its own ‘Supreme Court’ for handling takedown appeals”, *Ars Technica* (18 September 2019)
- vi. https://fbnewsroomus.files.wordpress.com/2019/09/oversight_board_charter.pdf Facebook Oversight Board Charter
- vii. <https://fbnewsroomus.files.wordpress.com/2019/09/letter-from-mark-zuckerberg-on-oversight-board-charter.pdf> Facebook Announcement – Commitment to the Oversight Board
- viii. https://www.itu.int/dms_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004!!PDF-E.pdf World Summit on the Information Society, “Declaration of Principles, Building the Information Society: a global challenge in the new Millennium” (12 December 2003)
- ix. <https://www.youtube.com/watch?v=btXsWuw3yvo> CNBC Video on Mark Zuckerberg’s call for stronger internet regulation

Session 5: Privacy and Data Protection (Friday 26 Mar.)

The commercial internet largely relies on targeted advertising, which requires access to personal information. Such access is granted by several platforms to ad companies absent the users’ real consent, and more generally monetized or used in order to generate data profiles. While regulation could discourage these practices by requiring platforms to provide users with an opt-out possibility, this would risk undermining the free-of-cost provision of online services, as most websites currently rely on targeted advertising for funding.

Themes:

1. GDPR-style data regulation as a global standard
2. Advantages and disadvantages of strict data protection for consumers and the industry
3. Space or other limitations on consumer protection

Please prepare informal answers to the following questions:

1. Why has data collection become crucial for advertisement and the economy in general?
2. What risks does the provision of information online entail for internet users?

3. How can such risks be avoided?

Readings:

A. Required Readings:

- i. Forbes Technology Council, “Data Privacy vs. Data protection: Understanding The Distinction in Defending Your Data”, *Forbes* <https://www.forbes.com/sites/forbestechcouncil/2018/12/19/data-privacy-vs-data-protection-understanding-the-distinction-in-defending-your-data/#366fdc4250c9>
- ii. Margot Kaminski, “Toward defining privacy expectations in an age of oversharing”, *The Economist* <https://www.economist.com/open-future/2018/08/16/toward-defining-privacy-expectations-in-an-age-of-oversharing>
- iii. European Commission, “Factsheet on the ‘right to be forgotten’ ruling (C-131/12)” https://www.inforights.im/media/1186/cl_eu_commission_factsheet_right_to_be_forgotten.pdf
- iv. Gary Marsden, “Post-GDPR Developments on Data Protection and Privacy Regulations Around the World”, *Security Boulevard* <https://securityboulevard.com/2019/11/post-gdpr-developments-on-data-protection-and-privacy-regulations-around-the-world/>
- v. Alan Travis and Charles Arthur, “EU court backs ‘right to be forgotten’: Google must amend results on request”, *The Guardian* <https://www.theguardian.com/technology/2014/may/13/right-to-be-forgotten-eu-court-google-search-results>

B. Optional Readings:

- i. Alvin Chang, “The Facebook and Cambridge Analytica scandal, explained with a simple diagram”, *Vox* <https://www.vox.com/policy-and-politics/2018/3/23/17151916/facebook-cambridge-analytica-trump-diagram>
- ii. Nick Allen, “Google's secret Project Nightingale gathers health data of millions”, *The Telegraph* <https://www.telegraph.co.uk/news/2019/11/12/googles-secret-project-nightingale-gathers-health-data-millions/>
- iii. David Uberti, “Facebook Misled Journalists About How Bad the Cambridge Analytica Scandal Was”, *Vice News* https://news.vice.com/en_us/article/qv777x/facebook-lied-to-journalists-about-how-bad-the-cambridge-analytica-scandal-was
- iv. Sarah Marsh, “‘Right to be forgotten’ on Google only applies in EU, court rules”, *The Guardian* <https://www.theguardian.com/technology/2019/sep/24/victory-for-google-in-landmark-right-to-be-forgotten-case>

- v. Christopher Kuner, Fred H Cate, Orla Lynskey, Christopher Millard, Nora Ni Loideain, Dan Jerker B Svantesson, "Expanding the artificial intelligence-data protection debate", *International Data Privacy Law*
<https://academic.oup.com/idpl/article/8/4/289/5299551?searchresult=1>

Easter Break (2 Apr. – 11 Apr.)

Session 6: Freedom of Expression (Friday 16 Apr.)

Factors such as the large appeal, open-access policy and user-friendliness of social media platforms render the latter a suitable means of real-time and independent reporting. At the same time, they facilitate the rapid spread of "fake news", the promotion of hate speech, the live streaming of acts of terror and political advertising. Such content is spread and reproduced at a pace moderators cannot keep up with. Real-time filters, in turn, present significant problems of legitimacy. In this light, the problem of how to moderate content on specific platforms naturally ensues. Indeed, on the one hand, freedom of expression entails the right of internet users to upload their desired content online subject to reasonable limitations. In fact, the internet could today be perceived not only as a medium of communication, but most importantly as a tool for realizing a range of human rights. But on the other, a corresponding obligation of platforms to exercise neutrality when filtering online content is naturally called for. The absence of a regulatory framework setting clear criteria for content moderation raises fears of deliberate 'silencing' by moderators for the promotion of specific agendas. Yet, little to no agreement can be reached in terms of what these criteria might be.

Themes:

1. Understanding the ways in which the internet frees expression
2. Understanding the technological means through which free speech can be controlled on the internet
3. The current state of international law in relation to freedom of expression on the internet
4. Connections between internet protocol design, innovation, and individual freedom of expression
5. Regulation of content moderation
6. Balancing freedom of expression against other rights

Please prepare informal answers to the following questions:

1. Whose voice has the internet freed?
2. What content has freedom of expression on the internet facilitated/led to?
3. Do today's socioeconomic realities militate in favour of a "right to be online"?
4. Why are fake news more readily believed on the internet?
5. What are the particularities of freedom of expression as exercised online?
6. Which values could trump over freedom of expression?
7. Are restrictions on freedom of expression online applied in a uniform manner across the globe?

Readings:

A. Required Readings:

- i. <https://www.reuters.com/article/us-usa-election-security/fbi-director-wray-russia-intent-on-interfering-with-u-s-vote-idUSKCN1UI1XW> Doina Chiacu, "FBI Director Wray: Russia intent on interfering with U.S. elections", *Reuters*
- ii. <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html> Paul Mozur, "A Genocide Incited on Facebook, With Posts From Myanmar's Military", *The New York Times*
- iii. <https://www.telegraph.co.uk/technology/0/fake-news-exactly-has-really-had-influence/> James Carson. "Fake news: What exactly is it – and how can you spot it?", *Telegraph*
- iv. <https://www.wsj.com/articles/facebook-our-ai-tools-failed-to-catch-new-zealand-attack-video-11553156141> Niharika Mandhana and Rhiannon Hoyle "Facebook Left Up Video of New Zealand Shootings for an Hour", *The Wall Street Journal*
- v. https://www.huffpost.com/entry/donald-trump-tucker-carlson-twitter_n_5d1b08bae4b03d611640dbb7 Lee Moran, "Donald Trump Accuses Twitter Of Illegally Making It Harder To Follow Him", *Huffpost*.
- vi. <https://www.rt.com/usa/423341-abby-martin-israel-youtube-blocked/> "Abby Martin interview critical of Israel is blocked by YouTube in 28 countries", *RT*
- vii. <https://www.cnbc.com/2019/06/19/reactions-to-sen-hawleys-bill-that-would-overturn-section-230-of-cca.html> Salvador Rodriguez, "Tech industry slams GOP senator's bill that would hold companies liable for user-posted content", *CNBC*
- viii. <https://www.theverge.com/2019/6/19/18681845/facebook-moderator-interviews-video-trauma-ptsd-cognizant-tampa> Casey Newton, "BODIES IN SEATS. At Facebook's worst-

performing content moderation site in North America, one contractor has died, and others say they fear for their lives”, *The Verge*

Session 7: Competition and Taxation (Friday 23 Apr.)

Online retailers, such as Amazon or Alibaba, have recently proceeded to acquire entities operating in the field of clothing, food production etc. This has raised fears of retailers unfairly propping up their own products in their search engines. More generally, the expansion of big tech into non-IT related fields has raised anti-trust/competition questions, which the current rules worldwide do not adequately address; anti-trust/competition rules are traditionally geared toward keeping prices at a reasonable level for consumers, while the services offered by big tech are already, largely, free of charge. On a similar note, big tech companies obtain undue advantages by circumventing otherwise applicable taxes. The current international tax rules are based on residence, permanent establishment and other physical presence-contingent notions, which big tech companies may evade, operating exclusively online.

Themes:

1. The traditional paradigm of competition/antitrust law against internet-related challenges
2. International and national legislation addressing tax evasion by big-tech companies
3. Next steps toward a possible digital tax reform

Please prepare informal answers to the following questions:

1. What do current competition/antitrust rules focus on?
2. How do current competition/antitrust rules benefit and disadvantage consumers and SMEs?
3. How are big-tech companies availing themselves of the absence of a global consensus on the taxation of the digital economy?

Readings:

A. Required Readings:

- i. Lina M. Khan, “Amazon's Antitrust Paradox”, *Yale Law Journal*
<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5785&context=yjl>
- ii. OECD, “Tax and digitalization” <https://www.oecd.org/going-digital/tax-and-digitalisation.pdf>
- iii. Robert Goulder, “Can You Guess Who Will Pay Apple's EU Tax Bill?”, *Forbes*
<https://www.forbes.com/sites/taxanalysts/2016/09/02/can-you-guess-who-will-pay-apples-eu-tax-bill/#100b7a12a5dc>

- iv. Isabel Gottlieb, “Big Tech Takes Fights Over French Digital to EU”, Bloomberg Tax <https://news.bloombergtax.com/daily-tax-report-international/big-tech-takes-fight-over-french-digital-tax-to-eu>

B. Optional Readings

- i. Karen Weise, “Prime Power: How Amazon Squeezes the Businesses Behind Its Store”, *The New York Times* <https://www.nytimes.com/2019/12/19/technology/amazon-sellers.html>
- ii. Angelique Chrisafis, “France's digital minister says tax on big tech is just the start”, *The Guardian* <https://www.theguardian.com/world/2020/jan/12/frances-digital-minister-tax-on-tech-giants-just-the-start-cedric-o-gafa>

Session 8: Cryptocurrencies (taught by Panagiotis Kyriakou) (Friday 30 Apr.)

Cryptocurrencies and cryptoassets are based on a distributed ledger technology that provides increased security for financial transactions. Moreover, they permit holders to sidestep financial actors such as banks and capital markets, while further disentangling the creation of fiat currency from state authority. Nonetheless, they increase the risk of financial bubbles, owed to their non-backing by state authority and corresponding volatility. In the long term, they may even challenge the stability of the global financial system, should traditional financial actors fail to adapt to them. Further, they present risks of fraud and pose security challenges due to the means of their storage.

Themes/issues to be discussed:

1. How do cryptocurrencies work? What is blockchain technology/ DLT?
2. What is the purpose of a cryptocurrency? How does Bitcoin differ from Libra in that sense?
3. In your opinion, are cryptocurrencies more accurately described as ‘assets’ or ‘currencies’?
4. What is the so-called disruptive potential of cryptocurrencies?
5. What dangers do cryptocurrencies pose to purchasers or investors?
6. What is the current regulatory status quo on cryptocurrencies? In your view, is there a need for greater harmonization? Do we need specific laws on cryptocurrencies or should their regulation be left to regular contract, securities and financial law?

Required readings:

- i. OECD, ‘Blockchain Primer’, <http://www.oecd.org/finance/OECD-Blockchain-Primer.pdf>

- ii. Rollcall Podcast, Ep. 135 with Prof. Chris Brummer, <https://www.rollcall.com/news/podcasts/eu-move-first-crypto-rules-will-us-follow>
- iii. Cointelegraph, 'Crypto Regulation Outlook in 2019', <https://cointelegraph.com/news/crypto-regulation-outlook-in-2019-what-is-the-global-scenario>
- iv. Hossein Nabilou, 'How to Regulate Bitcoin? Decentralized Regulation for a Decentralized Cryptocurrency', 27 *International Journal of Law and Information Technology* (2019) <https://academic.oup.com/ijlit/article-abstract/27/3/266/5566421?redirectedFrom=fulltext>
- v. Fintech Beat Podcast, Ep. 6, <https://fintechbeat.fiscalnote.com/>
- vi. [Optional readings to be shared a week before the session]

Session 9: E-Commerce and Online Dispute Resolution (Friday 7 May)

Electronic transactions have given consumers direct access to producers, significantly reducing transaction costs and time. At the same time, they have largely exposed consumers to scamming and fraud, encouraged targeted advertising and presented significant legal challenges, as traditional rules on contract formation have become futile in this context. Moreover, electronic transactions have put companies in control of the applicable law and jurisdiction, resulting in a form of self-regulation that may be at odds with consumer protection. These developments raise Private International Law questions related to choice of law rules (applicable law) and the territoriality of jurisdiction involving specific Regulations (Rome I, Rome II, Brussels Ia etc.) and Directives, and policy-oriented discussions which challenge the sufficiency of the existing regulatory legal framework paving the way for improvement or change. On the other end of the spectrum, the possible use of technology in dispute settlement (arbitral tribunals, courts) or even mediation ('online mediation') changes the nature of dispute settlement in general towards so-called 'digital justice', raising concerns with regard to the sound administration of justice and due process.

Themes:

1. Determining jurisdiction and applicable law in cross-border e-commerce
2. Approaches to consumer protection in the context of e-commerce; beyond legislation and dispute resolution
3. Self-regulation and dangers it poses to consumers
4. Defining 'online disputes'
5. Understanding the interests involved in online disputes

6. Understanding 'forum' and 'jurisdiction'; traditional benchmarks for jurisdiction; place of damage' v. 'centre of interests' as a benchmark for jurisdiction
7. Safeguarding due process, accessibility, impartiality and independence in online dispute resolution (online arbitration, cyber-courts etc.)
8. Perils of eliminating the 'human element' from judicial decision-making online

Please prepare informal answers to the following questions:

1. What are the advantages of e-commerce for consumers and retailers?
2. What risks may consumers face in e-commerce transactions?
3. What challenges may retailers face in e-commerce transactions?
4. What is an 'online dispute'?
5. What are the traditional benchmarks for jurisdiction?
6. Does online dispute resolution distort the judicial nature of dispute settlement by eliminating the 'human element'?
7. Would you suggest the resolution of internet disputes through arbitration in order to solve the problem of different competing jurisdictions over internet disputes?

Readings:

A. Required Readings:

- i. Joe Knotts, "What China's New E-Commerce Law Could Mean for IP Protection", *The Diplomat* <https://thediplomat.com/2018/12/what-chinas-new-e-commerce-law-could-mean-for-ip-protection/>
- ii. Faye Fangfei Wang, "Law of Electronic Commercial Transactions", <https://www.taylorfrancis.com/books/9780203628812> (Parts I and V)
- iii. Abdul Halim Barkatullah, "Does self-regulation provide legal protection and security to e-commerce consumers?", *Electronic Commerce Research and Applications*. <https://www.sciencedirect.com/science/article/pii/S1567422318300565>
- iv. OECD, "Unpacking E-commerce Business Models, Trends and Policies" <https://www.oecd.org/going-digital/unpacking-ecommerce.pdf>
- v. <https://academic.oup.com/ijlit/article/19/2/153/768357> Thomas Schultz, "Internet Disputes, Fairness in Arbitration and Transnationalism: A Reply to Julia Hörnle" (2011) Volume 19 Issue 2 *International Journal of Law and Information Technology*, pp. 153-163

- vi. <https://academic.oup.com/ijlit/article-abstract/27/3/209/5540944?redirectedFrom=fulltext>
Fahimed Abedi, John Zeleznikow, Emilia Bellucci, “Universal standards for the concept of trust in online dispute resolution systems in e-commerce disputes” (2019) Volume 27 Issues 3 *International Journal of Law and Information Technology*, pp. 209-237
- vii. <http://www.ejil.org/pdfs/19/4/1662.pdf> Thomas Schultz, “Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface” (2008) Volume 19 No. 4 *EJIL*, pp. 799-839.

B. Optional Readings:

- i. Trade and Development Commission, Intergovernmental Group of Experts on Consumer Protection Law and Policy, “Consumer protection in electronic commerce” https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf
- ii. Soop-Tzi Tang, “The Statutory Right of Withdrawal in E-Commerce”, Master Thesis in University of Neuchâtel http://doc.rero.ch/record/258042/files/The_Statutory_Right_of_Withdrawal_in_E-Commerce_Comparative_Study_of_European_Law_and_Swiss_Law.pdf (part 3.2 and 5)
- iii. OECD, "Understanding online consumer ratings and reviews" <https://www.oecd-ilibrary.org/docserver/eb018587-en.pdf?expires=1578867251&id=id&accname=guest&checksum=5660396223B63C1C1A773424C638999D>
- iv. E-Commerce Directive
- v. <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/internet-cases-in-eu-private-international-law-developing-a-coherent-approach/D0A2620AFC178147DCBFB7CCA394FC2D> Tobias Lutzi, “Internet cases in EU private international law- developing a coherent approach” (2017) Volume 66 *ICLQ*, pp. 687-721
- vii. <https://www.theguardian.com/technology/2019/jan/10/right-to-be-forgotten-by-google-should-apply-only-in-eu-says-court> Entry by Owen Bowcott on “Right to be forgotten should apply only in EU, says court opinion” (10 January 2019)
- viii. <https://www.jipitec.eu/issues/jipitec-9-2-2018/4722> Dan Jerker B. Svantesson, “European Union Claims of Jurisdiction over the Internet-an Analysis of Three Recent Key Developments” (2018) 9 *JIPITEC* 113 para. 1, pp. 113- 125
- ix. <https://academic.oup.com/ijlit/article/11/1/40/710650?searchresult=1> Andreas Manolopoulos, “Raising ‘Cyber-Borders’: The Interaction Between Law and Technology”

(2003) Volume 11 Issue 1 *International Journal of Law and Information Technology*, pp. 40-58

- x. <https://www.sciencedirect.com/science/article/pii/S2351667415000074> Karolina Mania, "Online Dispute Resolution: The future of justice" (2015) Volume 1 Issue 1 *International Comparative Jurisprudence*, pp. 76-86
- xi. <https://www.cambridge.org/core/books/crossborder-internet-dispute-resolution/CDA11E35A1711F6A6E318723FDCE63F0> Julia Hörnle, *Cross-border Internet Dispute Resolution* (CUP 2009)
- xii. <https://scholarship.law.unc.edu/ncjolt/vol6/iss1/6/> Thomas Schultz, "Does Online Dispute Resolution need governmental intervention? The case for architectures of control and trust" (2004) Volume 6 Issue 1 *North Carolina Journal of Law and Technology*, pp. 71-106
- xiii. Domain Name Dispute Resolution available at <https://www.wipo.int/amc/en/domains/>
- xiv. Online Dispute Resolution Pilot available at <https://www.youtube.com/watch?v=1cuKRgj-0ng>

Session 10: Cybersecurity (Friday 14 May)

Cyber-attacks are on track to become the main means of inter-state warfare. They also present increased security threats at the national level, to public security, health, finances and privacy. They have increased the possibility of cross-border crime and have resulted in significant costs for entrepreneurship by mandating high-security web and app developing. While standards on cybersecurity can be agreed upon, law is in reality apt to provide few, if any, weapons to tackle cyber-attacks. Some propose a 'Digital Geneva Convention' to govern such behavior and authoritatively outlaw cyberattacks between states, while there have also been suggestions for a third-party entity that could serve key functions in cyber governance, akin to a cyberspace security council or indeed tribunal, in order to resolve disputes peacefully and achieve a more secure cyber-environment.

Themes:

1. Types, targets and risks associated with cyberattacks
2. Ways of deterring cyberattacks
3. The current state of international law on cybersecurity

Please prepare informal answers to the following questions:

1. Should we legally differentiate between conventional warfare and cyber warfare?

2. How does international law currently regulate cyber warfare? Do cyberattacks qualify as “armed attacks”? And does a state bear responsibility for instructing the execution of a cyber attack, or failing to prosecute the same?
3. Given that the private sector controls most of the technical infrastructure on which the internet operates, does the policing of any ‘Digital Geneva Convention’ largely rest on the shoulders of non-state actors? In what ways could this be problematic?
4. Will the conclusion of a treaty make any meaningful difference to the status quo, in the light of its voluntary nature and in conjunction with the power of -the allegedly perpetrator-countries such as Russia and North Korea to simply refuse to conclude or even comply with such a treaty?

Readings:

A. Required Readings:

- i. Skim through <https://www.tradelab.org/single-post/2018/03/02/A-Digital-Geneva-Convention-to-Project-Cyberspace> ‘A “DIGITAL” GENEVA CONVENTION TO PROTECT CYBERSPACE? Evaluating the prospects for and content of a Convention on Cybersecurity’; by Francesca Casalini, Stefania di Stefano, Fabiola Rosi; submitted to the Republic and State of Geneva
- ii. <https://www.ft.com/content/65622adc-d51c-11e8-aa22-36538487e3d0> ‘Lay down rules of engagement for cyber war before it is too late’; By Anjana Ahuja, *Financial Times*
- iii. Scott J Shackelford and Scott Russell and Andreas Kuehn, 'Unpacking the International Law on Cybersecurity Due Diligence: Lessons from the Public and Private Sectors' (2016) 17 Chi J Int'l L 1

B. Optional Readings:

- i. <https://www.telegraph.co.uk/news/2017/05/13/nhs-cyber-attack-everything-need-know-biggest-ransomware-offensive/> ‘NHS cyber attack: Everything you need to know about 'biggest ransomware' offensive in history’; By Chris Graham, *The Telegraph*
- ii. Microsoft, “Why do we need a Digital Geneva Convention?”, <https://www.youtube.com/watch?v=3Cw60SlwCk8>

Session 11: Intellectual Property (Friday 21 May)

The past decade has seen many intergovernmental attempts to curtail the unauthorized reproduction of copyrighted material. This has coincided with the rise of online streaming platforms such as Spotify, Netflix etc. While the traditional argument in favor of IP norms, i.e.

that the harmonization of IP protection encourages cross-border innovation, continues to hold a degree of validity, new realities challenging this argument have emerged. For instance, the cost of music and video production has significantly decreased, such that IP protection is not the most focal factor driving innovation. Moreover, forms of entertainment which rely on the use of otherwise copyrighted content, such as memes, have gained wide acceptance by internet users.

Themes:

1. The relationship between IP and innovation/creativity in light of developments in information technology
2. Enforcement and circumvention of IP on the internet
3. Striking a balance between freedom of expression and IP protection

Please prepare informal answers to the following questions:

1. What are the political or societal implications of IP protection on the internet?
2. What new business models have IP violations on the internet led to?

Readings:

A. Required Readings:

- i. <https://academic.oup.com/jiplp/article-abstract/13/3/229/4774999?redirectedFrom=fulltext>
Giulia Schneider, "European intellectual property and data protection in the digital-algorithmic economy: a role reversal(?)" (2018) Volume 13 Issue 3, *Journal of Intellectual Property Law & Practice*, pp. 229-237
- ii. <https://academic.oup.com/jiplp/article/12/2/136/2918110?searchresult=1> Matthias Leistner, "Copyright law on the internet in need of reform: hyperlinks, online platforms and aggregators" (2017) Volume 12 Issue 2 *Journal of Intellectual Property Law and Practice*, pp. 136-149
- iii. https://www.jstor.org/stable/3693624?seq=1#metadata_info_tab_contents Kenneth C. Shadlen, Andrew Schrank, Marcus J. Kurtz, "The Political Economy of Intellectual Property Protection: The Case of Software" (2005) Volume 49 No. 1, *International Studies Quarterly*, pp. 45-71

B. Optional Readings:

- i. TED Video on "Laws that choke creativity" available at https://www.ted.com/talks/larry_lessig_says_theLaw_is_strangling_creativity/transcript?language=en

- ii. <https://www.forbes.com/sites/larrymagid/2012/01/18/what-are-sopa-and-pipa-and-why-all-the-fuss/#5c140fce22dd> Entry by Larry Magid on SOPA and PIPA, Forbes (18 January 2012)
<https://www.express.co.uk/life-style/science-technology/1087782/Pirate-Bay-WARNING-jail-threat-downloading-torrents-illegal-content> Entry by Dion Dassanayake on Pirate Bay, Express (15 February 2019)
- iii. <https://www.independent.co.uk/life-style/gadgets-and-tech/news/article-13-vote-eu-meme-ban-copyright-law-rule-explained-a8841016.html> Entry by Andrew Griffin on EU Meme Ban, Independent (26 March 2009)
- iv. <https://scholarship.law.duke.edu/djil/vol12/iss1/6/> Edward Kwakwa, "Some comments on rulemaking at the World Intellectual Property Organization" (2002) Volume 12 *Duke Journal of Comparative and International Law*, pp.179-196

Session 12: Principles of International Internet Law (Friday 28 May)

Being a pervasive network, the internet touches upon the lives of private and public actors alike; as a result, it is subject to different fields/regimes of international law. Although the codification of international rules pertaining to the internet remains in flux, certain legacy international law rules apply to activities carried out on, or with respect to, the internet. Such rules have not been created and applied against the internet as a factual/societal reference framework, and thus govern the same indirectly or as a matter of "externality". Others have been specifically designed to address internet-related problems, yet remain incoherent and are not sufficiently interconnected so as to warrant or facilitate their systematic understanding and examination. This session extracts key principles from the normative complex explored in the preceding sections, and attempts to systematize the same, with a view to exploring whether a new field or regime is emerging, and whether such a field or regime would be desirable in the first place.

Themes:

1. The role of international law rules on state responsibility and jurisdiction with respect to the internet.
2. The role of international human rights and WTO norms with respect to the internet.
3. Possible conflicts between international law principles governing the internet.
4. Determination of the key international law principles of internet governance.

Please prepare informal answers to the following questions:

1. In your view, is traditional international law well-equipped to regulate the internet?
2. Why is there currently no codification of a set of “internet law principles”?
3. In your opinion, would it be accurate to argue that there is and should be a unitary legal framework for the internet?
4. Should the regulation of the internet fall within the material ambit of international law, or should it mostly be left to domestic regulators?

Readings:

A. Required Readings:

- i. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/glj103&div=13>, Eichensehr, Kristen, “The Cyber-Law of Nations”, 103 Geo. L.J. 317 (2015)
- ii. <http://www.jstor.org/stable/1229390>, Johnson, David R. and Post, David, “Law and Borders: The Rise of Law in Cyberspace”, 48(5) Stanford Law Review 1367 (1996)
- iii. <https://www.cambridge.org/core/journals/german-law-journal/article/principles-of-international-internet-law/3E9B0ED4BABDC582FA1A053DDD454987>, Uerpmann-Witzack, Robert, “Principles of International Internet Law”, 11 German Law Journal 1245 (2010)

B. Optional Readings: TBD

Session 13: Exam (Friday 4 Jun.)