WHAT IS THE GEOGRAPHY OF CYBERSPACE?

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About

All stakeholders acknowledge the tension between the vertical nature of national jurisdictions and the horizontal nature of the cross-border Internet. The resulting complex and multi-layered interactions are difficult to picture. The workshop explored the legal geography of cyberspace and how it relates to the Westphalian international system and its patchwork of legislations.

The discussions scrutinized the concept of national sovereignty in cyberspace and highlighted potential options for future frameworks or mechanisms to govern the cross-border Internet.

Main Take-Away: Managing Commons, not separating sovereignties

Connected via the Internet, 192+ national jurisdictions co-exist in one shared space. However, the Westphalian concept of jurisdiction is rooted in the separation of territories, while the Internet was designed as a cross-border space. The Internet's topology nevertheless interpenetrates the physical space, leading to a meshed geography of overlapping layers of technologies and jurisdictional competences. The panelists highlighted that the main challenge for mankind is to find frameworks to manage these new commons, to enable peaceful co-existence of billions of users on the Internet. Failure to do so could result in zero-sum power redistributions and the gradual re-territorialization of the Internet, which would undermine the value that this common infrastructure created for mankind.

Discussion Highlights:

Internet Layers: The Internet is built upon a separation between a logical layer (naming and numbering) and an application layer (including content). In asserting their national jurisdiction over online activities, states should not tinker with this separation to regulate content.

CyberspaceS: The Internet consists of multiple public and private cross-border spaces, each of which subject to rules that come from national laws and/or private Terms of Service.

Sovereignty in Cyberspace: The assertion of sovereignty by one country can have extraterritorial impacts over other states and their Internet users. A no-transboundary harm principle and the notion

of collaborative sovereignty were discussed. It would be useful in that regard to distinguish between intended and unintended cross-border impacts.

Multiplicity of competence criteria: States assert national jurisdiction based on the location of the user, the domain operator, servers or where cross-border online platforms are incorporated. Therefore, cross-border online services can be simultaneously subject to various jurisdictions.

Digital Territories: Users of cross-border online platforms and services become subject to the Terms of Service of these "digital territories". Their national and digital citizenships can be analyzed as different forms of stakeholdership.

Global Constituencies: Parliamentarians in one country become subject to requests by people in other countries because of the potential extra-territorial impact of national legislations.

Renationalization: Recent trends of geo-IP filtering and assertion of jurisdiction based on TLDs indicate the danger of the re-territorialization of the Internet. Turning the Internet into a collection of national intranets would destroy the benefits of this global infrastructure.

Cybertravel: Is a user performing a form of cybertravel when he/she visits a site located in a different country? Should this be protected as a right of free circulation? Has this user a right to choose a different – virtual - location than the territory he/she is physically in, in order to access content blocked in its jurisdiction?

Power redistribution: There is a competition between jurisdictions (national laws) and platforms (Terms of Service) to define a new power equilibrium for the governance of cross-border online spaces.

Possible regimes to manage commons:
- Existing International Law
- International treaties
- International Organizations
- Self-regulation of companies
- Private regimes (companies and civil society)
- Multi-stakeholder regime(s)

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Video recording of the workshop is available at:
http://www.internetjurisdiction.net/events/past-events/igf-baku/geography/

The transcript is available at:
http://www.intgovforum.org/cms/2012-igfbaku/transcripts

For more information about the Internet & Jurisdiction Project, please see the web site:
www.internetjurisdiction.net