



LEGAL ASPECTS OF THE INTERNATIONAL INTERNET REGULATION — LEGAL SYSTEMS AND INTERNET

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Objectives of the presentation

- **Introduce** the most important legal issues concerning Internet regulation;
- **Instigate** the audience thoughts about the biggest problem of Internet regulation – convergence between national policies and international guidelines;
- Is it possible to produce **an international practical solution** that takes in account the asymmetries and differences?
- What is the role of the **national courts**?

USA and the CDA – Section 230



Former President Bill Clinton signed a Federal Bill that amended the Telecommunications Act in 1996. It was the Communications Decency Act. The statute was passed by the US Congress to answer some social panic that emerged along with the expansion of the Internet.

USA and the CDA – Section 230

After a long social mobilization process, the US Supreme Court ruled against most of the CDA provisions, in 1997. Only the Section 230 survived. The lawsuit was filed by the ACLU (Reno v. ACLU) The Section 230 states the Internet Content Providers absence of responsibility for materials uploaded by users. The EFF took part in the campaign.

There are many federal statutes in US

Some authors wrote that US Internet is auto-regulated. That is not entirely correct. There are a lot of federal statutes that regulate Internet in the US. Some of them: Electronic Communications Privacy Act (18 US Code, Sections 2701-2711), Anti-cybersquatting Consumer Protection Act (15 US Code, Section 1125-d), Child Internet Protection Act (47 US Code, Section 254), and the Digital Millennium Copyright Act (17 US Code, Section 512). There are many state statutes also.

An unregulated Internet is not feasible

The American judicial branch has ruled a lot about Internet also.

The FCC (Federal Communications Commission) too. It is important to understand that the FCC produces legal norms that have similar enforcement as the statutes passed in the US Congress. All are considered statutory norms. Nevertheless, such statutory provisions coexist with many private contracts. From a national-level point of view, that is perfectly normal.

The key issue from an international point of view is to think about new arrangements

We have three theoretical possibilities to understand the contemporary legal systems, and their complex relations:

- ① A traditional model, that is state-centered. In this model, the legal norms are organized in a hierarchical system, that is logically coherent. The legal concepts in the lower echelons must be linear products of the higher echelons. When I received the guidelines from UIT, they demanded me to talk about legal branches. This model is a tree-like one, after all.

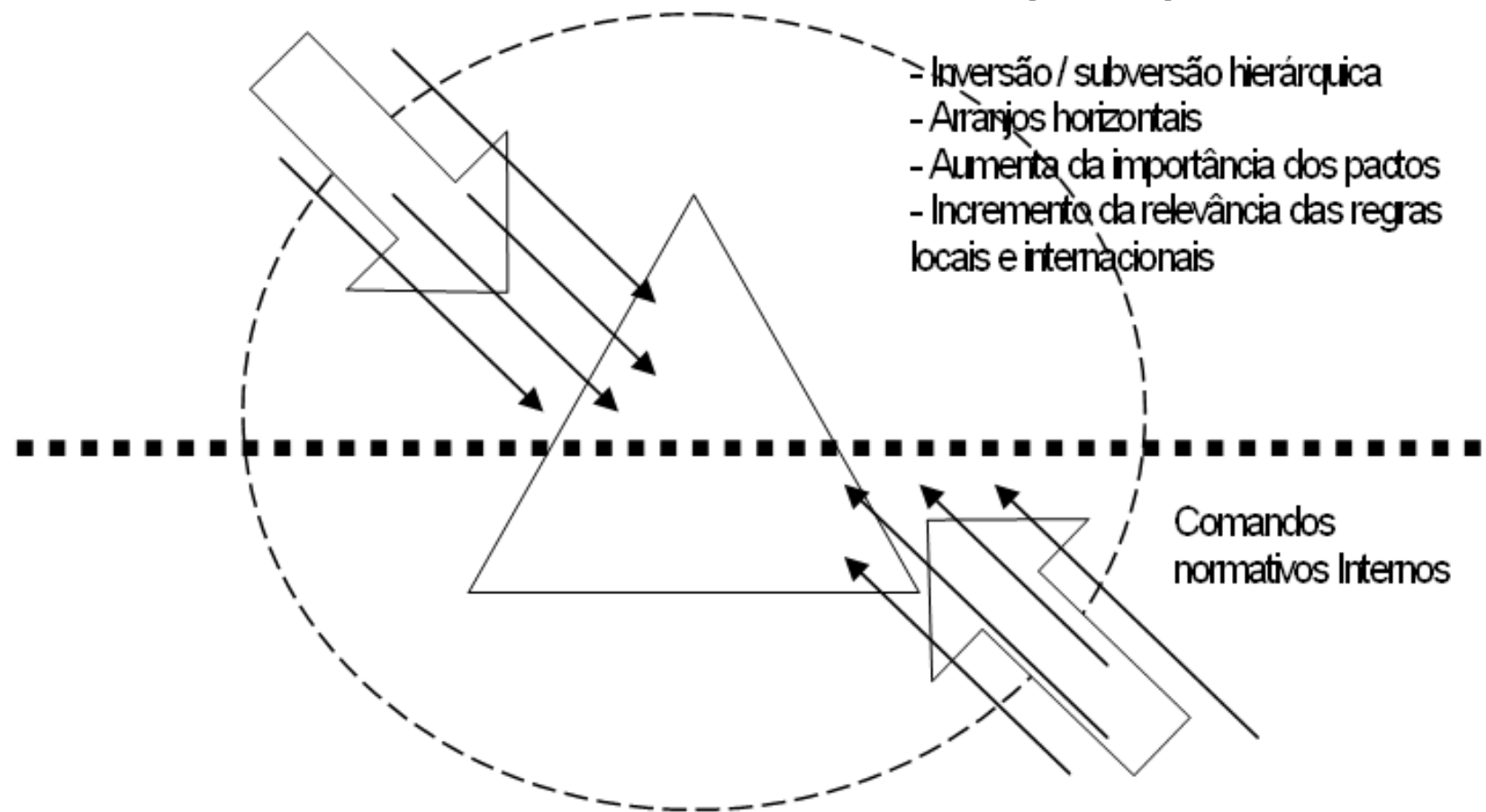
The previous model shows clear limits: a networked legal system

The network legal system is proposed as a critic by François Ost and Michel Van De Kerchove:

- 2 The second model is still state-centered. But the authors took the first step to provide a critic of the traditional system. They show that the national legal systems are suffering more and more pressure to recognize external and internal legal sources of norms. The growing importance of international arbitration, and some cases concerning international crimes are obvious examples.

Comandos normativos externos

Consequências práticas



We can think about a third model: dynamic networked legal systems

Two contemporary authors gave me inspiration to criticize and improve the previous networked legal system built by Ost & Van de Kerchove: Manuel Castells and Andrew D. Murray. The former wrote about the networked states in “Communication Power” (2009). The later wrote a paper entitled “Nodes and Gravities in Virtual Space” (2011). Both are concerned with Internet regulation. ③ We can imagine a dynamic networked legal system.

Dynamic networked legal systems in action

- ① First characteristic. The key idea of this model is to provide a framework to outsmart the most critical problem of the Internet regulation: the necessity of local rules that are coherent with transnational norms and practices. The central issue in the contemporary Internet regulation is the adaptability of the many local and regional legal systems to international rules and vice versa.

Dynamic asymmetric legal arrangements

- ② Second characteristic. The great problem of a real Federation is to provide fair treatment to the most feeble member-states without being too harsh to the stronger ones. The clear solution is to provide some legal mechanisms that may be used to produce unequal rulings without being unfair. In order to do so, it is necessary to postulate rules – internationally, nationally, and regionally – in benefit of the most fragile.

International networked cooperation

- ③ Third characteristic. The new legal systems in network and dynamic action must be prone to exchange information and cooperate in order to grant effectiveness of other states. A ruling in Brazil against someone must be more easily enforced abroad. Nowadays, there are mechanisms to cooperate. They tend to grow stronger. Some states will tend to evade such cooperation. By doing so, they will pay the price of seeing the diminishing of their judicial enforcement. The same must happen with administrative cooperation.

An example from environmental litigation



Chevron was held responsible for a large environmental damage against Lago Agrio in Ecuador. The national judicial branch ruled an order that determined the company to pay US\$ 8 billion in 2011 to compensate the damage.

The quest for payment in a lot of countries

The environmental advocacy groups started a worldwide quest to collect payment from the Equator judicial award in many countries: USA, Canada, Argentina, Brazil, etc. All these national courts formally ignored the other countries courts. The central lesson that can understood from the case is that the national judicial systems still have to improve their cooperation mechanisms in order to deal with international cases.

The European Union made many improvements in cooperation

The establishment of a regional legal system within EU has provided both the courts and the administrative systems with many powers to enforce rulings. Although, the central question remains: the necessity of counter-balance and asymmetry. Such mechanisms are part of a kind of federal system, and the EU rejected such possibility along with the proposal of a regional constitution in 2005.

Any practical solution must have an international ground along with national cooperation

It is necessary to have some key norms regarding international data exchange and processing. The central issue is that such legal framework will continue to evolve in the manner of treaties for one instance, and international contracts for the other. Notwithstanding, it is important to imagine a more cooperative scenario in which ITU and UN system can facilitate the establishment of guidelines. Such quasi-rules can help to create legal norms on most national systems, for example.

On local level, the courts and administrators are taking action – Max Schrems

It is well-known the action of Maximilian Schrems against Facebook in many national jurisdictions. This lawyer is set on an endeavor to promote the citizens' right to a personal management of their own data. That right was created in the EU from two sources. The first is the autonomy digital right that emerged from a case ruled by the Constitutional Court of Germany in 1983. Furthermore, the EU inserted the right of personal data protection in the 8th article of the European Declaration of Fundamental Rights. Due to that, the activism has a legal ground in Europe.

The same happened in US against Facebook

Facebook experienced many lawsuits in the United States also. One lawsuit was filled in 2014 by two citizens under the argument that Facebook had no respect to their privacy, concerning the Messenger communication system. Other lawsuit was filled in 2016 alleging that Facebook had not took action against Hamas in the social network. Also, many other providers were sued in US since 1995. So, I can guess that the national courts' will still have to deal with lawsuits in the next years.

Transnational players and national responses

Google and Facebook are experiencing a lot of trouble in Europe nowadays. The European Antitrust Authority enacted a recent ruling to punish Google for market concentration and demanded some solution to be provided by this major player. The same fate awaits Facebook concerning the right to desindexation (déféréncement). The CNIL – Commission Nationale de l'Informatique et des Libertés – punished Google for not complying with an administrative ruling regarding pleads from four French citizens. In the very past, Microsoft experienced a similar administrative ruling in the antitrust case about Windows and Explorer joint selling.

The solution resides on cooperation

But all those major players have transnational operations. So, one class action here or there will not impede their action. Whereas some states and regional authorities take action, others do not. It is clearly necessary that such lawsuit and administrative actions must be more coordinated to produce any desired effect.

I hope that a new model of transnational cooperation can be built from the insights provided by the contemporary social sciences.

Conclusions to stimulate a debate

1

Many countries – and EU also – are **producing local statutes** to regulate the Internet. Is it necessary to produce legal guidelines over the major trends (privacy, commerce, algorithms, etc.)?

2

Those guidelines must deal with private legal relationships?

Conclusions to stimulate a debate

3

What is **the most legitimate forum** to sponsor the production of those transnational guidelines? Do we will need a special worldwide treaty, like Intellectual Property and Telecommunications?

4

Do we need to produce provisions in the guidelines to cover **judicial cooperation** in some areas of Internet conflicts and affairs?

Thank you!

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