Barlow

- Place and Cyberspace
- No Government?
- Ordinary legal concepts don’t apply?
- Global social space naturally independent of tyrannies?
- Methods of enforcement not to be feared?
**Johnson & Post**

- Old borders; new borders
- Law pervades a territory
  - Power -> enforcement
  - Effects (ex: trademark in Brazil)
  - Legitimacy
  - Notice by borders
- Application to cyber-borders?

**Goldsmith**

- Application of local law to extraterritorial behavior with substantial local effects
- Regulate domicile or citizen’s extraterritorial behavior
- Choice of law
  - . . . all leading to weak notice requirements
- Examples . . .
- Insights for cyberspace . . .
Rothchild

- Online communications are like . . .
- Effects of online communications may vary from place to place
- Most law-enforcing difficulties are practical
  - Virtual addressing
  - Cost/speed advantages
  - “border” “crossing-points”
- Deceptive practices resistant to control by market forces

Pluralist Regulation of online conduct

- Transnational cyberspace law
- Intermediaries . . .
  - ISP
  - Payment intermediaries
  - Online auction operators
  - Search engines
  - Domain name system
  - Package delivery companies
- Norms
- Coordinated private action
- Code
Federalism and Internationalism

- ICANN example

- Pros/Cons of U.S. Federal law versus state law in the U.S.

- Current example:
  - Security Breach Notification Legislation

Extraterritorial Assertions of Regulatory Authority

- Yahoo!

- Dow Jones
Dormant Commerce Clause (DCC) and Online Activities

- ALA v. Pataki (SDNY 1997)
  - DCC: discriminate; unduly burden, cohesive national treatment
  - Not merely intrastate, not limitable to NY, impacts a means of “commerce”
  - Applies to conduct wholly outside NY
  - Invalid indirect regulation of interstate commerce (IC): burdens on IC are excessive in relation to local benefits
    - *Pike*: legitimacy of state interest; weigh burdens
  - Is the area one admitting of diversity of treatment by the states?
    - Can’t “steer around” part of the Internet

Dormant Commerce Clause and Online Activities

- State v. Heckel (Wash. 2001)
  - DCC: discriminate; unduly burden, cohesive national treatment
  - *Pike*: legitimacy of state interest; weigh burdens
  - Act protects interests of ISPs, domain name owners, and email users
  - Truthfulness requirement of Act
    - Minimal burden from cost of compliance; actual compliance facilitates commerce
    - No conflict with other states’ statutes, additional but not inconsistent requirements
  - No sweeping extraterritorial effect
    - Not as broad in coverage as law at issue in *Pataki*
Regulated Industries Online

- Pharmacies
  - Price discrimination
  - Arbitrage via cross-border flows

- Telephony