

Internet Law

- Module 1
- Regulatory Paradigms for Electronic Commerce

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?



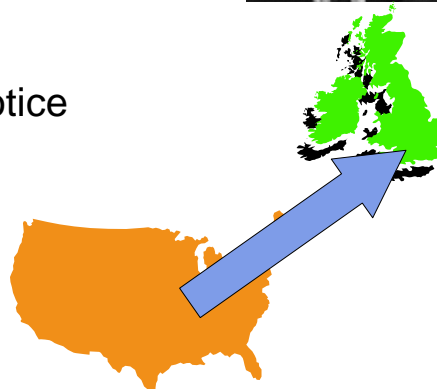
Johnson & Post

- 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 . . .



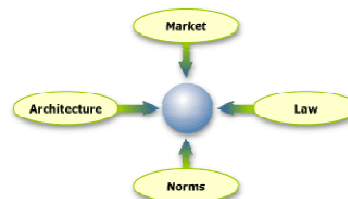
Rothchild

- 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

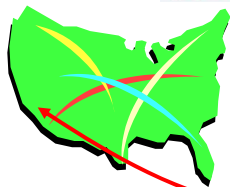


Federalism and Internationalism

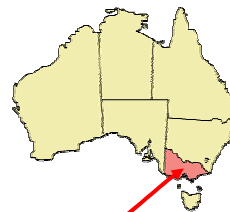
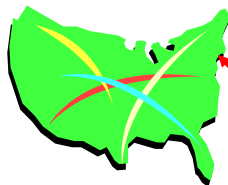
- ICANN example 
- Pros/Cons of U.S. Federal law versus state law in the U.S.
- Current example:
 - Security Breach Notification Legislation

Extraterritorial Assertions of Regulatory Authority

- Yahoo! 



- Dow Jones 



Dormant Commerce Clause (DCC) and Online Activities

- ALA v. Pataki (SDNY 1997)
 - DCC: discriminate; undue 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; undue 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



Vonage