Extraterritorial Enforcement of National Laws in Connection with Online Commercial Activity

Marketa Trimble
Associate Professor of Law
William S. Boyd School of Law

Internet Law Works-in-Progress
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- National laws on the internet
- Transnational forces forming national laws
- Enforcement not limited to state enforcement power
- Alternative enforcement in the shadow of state enforcement
- Extraterritorial enforcement
  - Remote and decentralized activity on the internet
- Impact of uncertain enforcement on substantive law debates
- Transnational commercial activity
  - All aspects of online commerce;
    not limited to “commercial law” or EU E-Commerce Directive
  - No internet infrastructure governance issues
  - International, not inter-state commercial activity

- Limits on the ubiquitousness
  - Geoblocking
  - Other targeting
  - Other traditional market-partitioning tools

- Lack of uniformity
  - Tangible v. intangible goods
Prescriptive and Adjudicatory Perspectives

- Point-of-source v. point-of-consumption principle
- Point-of-source principle
  - EU E-Commerce Directive
- Point-of-consumption principle
- Attractiveness of the point-of-source principle
  - Issues of proper localization
  - Enforcement issues
- Benefits of the point-of-consumption principle
- Substantive content as a problematic guideline to the selection of the principle
A Country’s Enforcement Power

- Jurisdiction and enforcement power over the defendant
  - Territorially-limited enforcement
- Secondary liability and intermediaries
- Border measures

Enforcement Assistance from Other Countries

- Judgments by courts of general v. specific jurisdiction
- Limitations on application of foreign law and enforcement of foreign judgments

Territorial Scope of Injunctions on the Internet
Supranational Limitations on Extraterritorial Enforcement

- Free movement of goods and services (EU, EEA)
- No barriers to trade (WTO)
- Exceptions

Possibilities for Improvement

- Rogue countries
- Alternative enforcement problems
  - Location of servers; intermediaries
- Enforcement of public law v. private law
- Industry actions
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