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Internet Jurisdiction

Emerging Issues and Way Forward

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Evolution of cyberspace

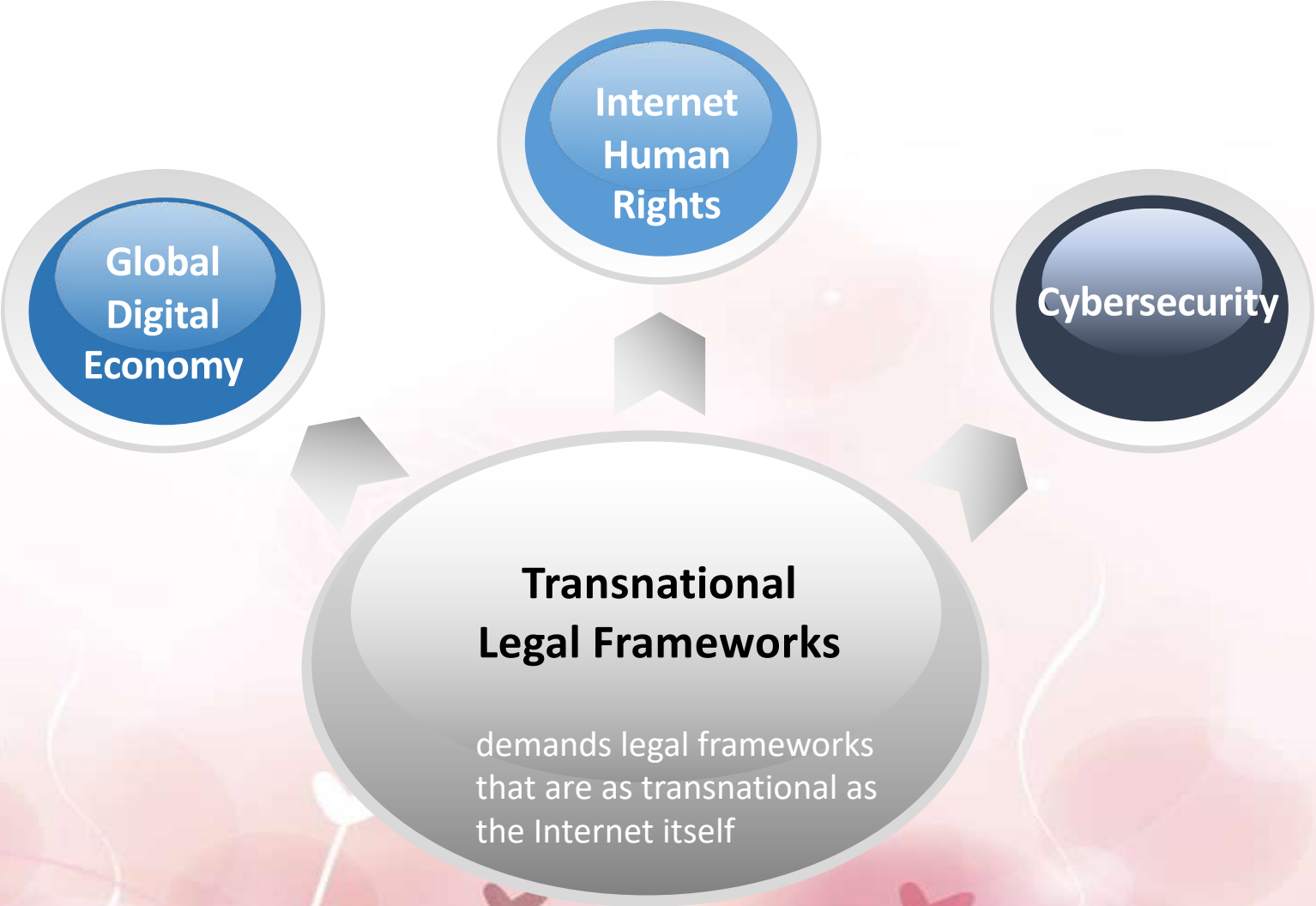


Introduction



The Internet is **transnational** while legal systems remain based on **territoriality and separated jurisdictions**

Transnational legal frameworks



Cybercrime Case: The Pirate Bay

2003 The Pirate Bay online

2015 2 domains seized by Swedish Court



piratebay.se
thepiratebay.se



2 domains seized ,
6 domains expanded



piratebay.gs
piratebay.la
piratebay.vg
piratebay.am
piratebay.mn
piratebay.gd

The expanded domains are outside the jurisdiction of Sweden

Cybercrime Case : Online activities and data locations

- The controversial tweets were made by someone in US, which is also where Twitter and its servers are located
- In the US, hate speech is protected by free speech laws.
- But in France, where the tweets were seen and in many European countries – hate speech is illegal.



Consider the far-reaching impacts of this attempt to regulate Internet and social media speech.

- Do laws of one country apply to a company based in another country whose laws differ?
- Can a nation ever have global jurisdiction over speech on the Internet?

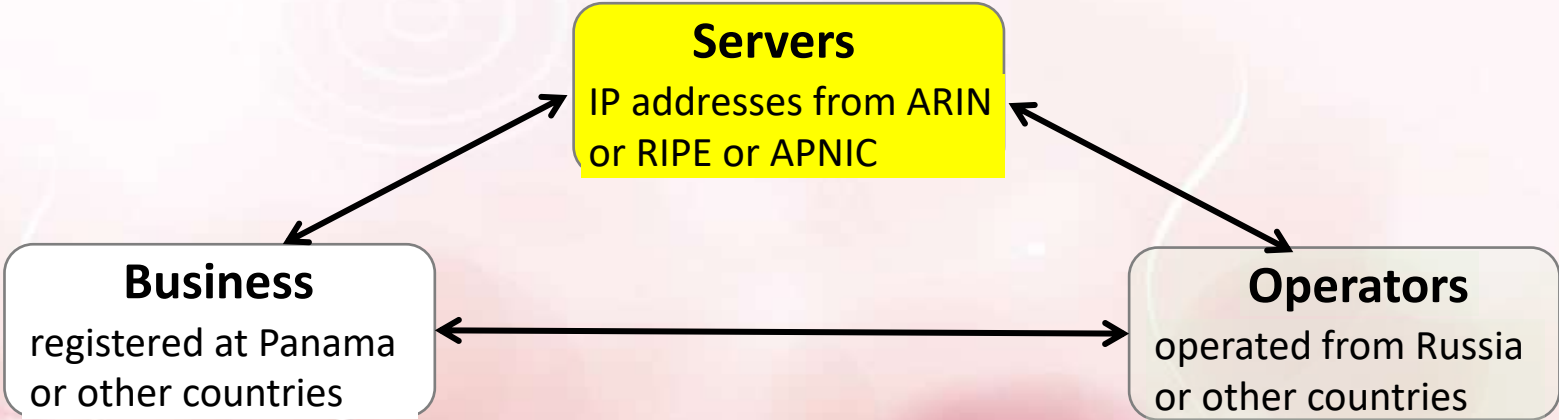
Cybercrime Case: First Space Crime



Data sources: CBSNEWS, 2019

- ❑ Astronaut *Anne McClain* is facing the first allegation of a crime committed in space.
- ❑ McClain's estranged wife, *Summer Worden*, asked her bank about the locations of the devices that had used her login information to recently access her account. She reportedly found that one computer network used was registered to the NASA.
- ❑ *Worden* accused *Anne McClain* of accessing her bank account while on a six-month mission aboard the International Space Station.

Cybercrime Case: Business registration & multiple layers of resistance



Cyber Jurisdiction Case: US embargo against Cuba

U.S. pulls the plug on Europeans who want to visit Cuba

By ADAM LIPTAK MARCH 4, 2008



Steve Marshall is a British travel agent. He lives in Spain, and he sells trips to Europeans who want to go to sunny places, including Cuba. In October, about 80 of his Web sites stopped working because of the U.S. government.

The sites, in English, French and Spanish, had been online since 1998. Some, like Cuba-Hemingway.com, were literary. Others discussed Cuban history and culture, like Cuba-HavanaCity.com. Still others - CiaoCuba.com and BonjourCuba.com - were purely commercial sites aimed at Italian and French tourists.

A British citizen living in Spain, with Internet Servers in the Bahamas, selling trips to European who want to go to Cuba, and having his domain name suspended by his US registrar because it breaks the US's embargo against Cuba

Cyber Jurisdiction Case: China **Intranet**



China Internet entire structure is very much akin to a corporate intranet with these advantages

1. China can impose its internet censorship program
2. China can disconnect from the internet whenever it detects an external attack, but still maintain a level of internet connectivity within its borders
3. Domestic traffic never leaves the country's borders

No one size fits all solution

- Internet is a cross-border communications media with no single authority governing it
- Disputes between countries with different laws often arise
- Different countries have different policies on Internet regulation
- Existing remedies for resolving international conflicts of law are inadequate for the Internet
- No one size fits all solution for near 200 countries.
- Courts have long recognized these issues but there has been little progress made toward finding a solution to the Internet jurisdiction dilemma

Consequence

The economy suffers as businesses are less likely to invest and innovate due to legal uncertainties

E-commerce waste valuable resources handling international legal disputes

Users may find themselves facing legal claims for activities that are legal in the user's country

Less investment

International legal disputes

Uncertain legal claims

Economic impact



Even within the same country, there are sometimes disagreements about internet jurisdiction. Two Californian judges in the same district disagreed about their jurisdictional competence to hear cases between a Korean plaintiff and an Australian defendant, who used US social media platforms.

Data sources: Britannica

Characteristics of Internet Policy Development

characteristics	ICANN	ITU	IGF	APNIC	IETF	NATO
multistakeholder	x		x	x		
bottom-up model of governance	x		x	x	x	
standard setting	x	x		x	x	
operates based on contractual compliance	x			x		
governmental		x				x
sets internationally enforceable obligations for states		x				x

Global Ecology of Choices for Internet Governance

Governmental Policy &
Regulation

ISP (Intermediaries)
Agreement

User Learning &
Education

Bilateral &
Multilateral
Treaties

Techno Populism

Multistakeholder
Internet
Governance

Towards a global standard



Courts have struggled to develop a satisfactory solution, yet no progress has been made toward a uniform global standard of internet jurisdiction,. Some proposals have been made.

Internet jurisdiction proposals

1. Universal regulatory scheme	2. Global standard for determining jurisdiction
<p>An international convention would lead to a treaty establishing substantive universal standards for what's legal and illegal. The treaty would also create an international body that would promulgate civil and criminal Internet regulations and jurisdictional rules</p>	<p>A treaty would be signed by all nations that creates a single test for determining Internet jurisdiction. It could, for example, be an effects test. Under this principle, a state may assert jurisdiction over conduct that has an effect, but does not actually occur, within its border.</p>
3. Filtering	4. Choice of laws provisions
<p>Governments would regain control of their borders by placing blocking and tracking technologies at international access points or at the Internet Service Provider's (ISP) servers to act as centurions.</p>	<p>Content providers and users could agree to resolve disputes in a particular forum via choice of law provisions in terms of service contracts</p>

Way forward

- The best model for Internet governance may be a hybrid that incorporate some elements from multiple models.
- Internet governance is a complex task requiring a complex set of regulatory mechanisms

THANK YOU!