

Governance of Networked Data

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Roadmap

- What is meant by “governance of networked data”?
- Platforms and intermediary liability
- Hyper-linking and various data transfer restriction laws
- Search engines and various data transfer restriction laws
- Jurisdictions of various disputes on a global network

Vocabulary

- Intermediary/Platform/ISP/TCP-IP/Router computer/domain name server

Governance of Networked Data

- Internet → Where is data? data resides in network, not stationary in one place. What does it mean to “visit a website”? E.g., **is a pageview copyright infringement?**
- What does this aspect of Internet change the rules of governance?
 - Rise of platforms – intermediaries → intermediary liability – **Manila Principles, Arista (Cloudflare), Tiffany v Ebay**
 - Importance of navigation - Hyperlinking liability, search liability
 - Permanent presence – right to be forgotten- **Google Spain**
 - Clouded data – jurisdiction for obtaining data – **Microsoft Ireland**
 - Clouded data –jurisdiction for blocking data – **CNIL, Equustek**
 - Cross-border data transfer – **Schrems**

Intermediary liability 1

- Social significance of Internet – giving powerless individuals ability to speak to “the world” – Caveat: but also give everyone to choose what to listen to.
- Comparison to other legacy mass media – TV, newspaper (influences of gov’t and capital)
- Jasmin revolution – <http://www.epolitics.com/2011/02/10/how-social-media-accelerated-tunisias-revolution-an-inside-view/>;
<https://www.theguardian.com/world/2011/feb/25/twitter-facebook-uprisings-arab-libya>
- Korean Constitutional Court decision on Internet Real Name Law (2012) : “Internet is a rare medium through which humanity can overcome offline hierarchy of gender, age, and social status and speak equally for better democracy.”
- Q: how to preserve the ability to upload and download UNAPPROVED →

Intermediary liability 2

- A: Intermediary liability safe harbor : “Platforms shall not be liable for unknown contents no matter what.”
<http://opennetkorea.org/en/wp/1350> EU e-Commerce Directive, US DMCA/Section 230, Japan Provider Liability Law
- <https://www.manilaprinciples.org/>
- Notice and takedown v. Notice to notice
- How about for known contents but illegality is not clear? – Korean mandatory notice and takedown vs. general tort liability v. Shreya Singhal (India)
<https://thehnlweekly.wordpress.com/2015/08/07/intermediary-liability-in-the-context-of-the-shreya-singhal-judgment/>
- German “fake news” intermediary liability law;
<https://www.theverge.com/2017/6/23/15852048/germany-hate-speech-facebook-twitter-fine-censorship>

Navigation tools

- The most philosophical aspect of data being “networked”: Data is “everywhere” already and is summoned by the users. Is pointing to the “location (navigation)” the same thing as providing the data when the author of the data is not actively providing it?
- Linking – Is a link to illegal material also illegal?
 - <http://www.dmlp.org/legal-guide/linking-copyrighted-materials>
 - <https://techcrunch.com/2016/09/08/europes-top-court-rules-linking-can-infringe-copyright-if-done-for-profit/>
 - https://motherboard.vice.com/en_us/article/mggpdy/click-here-for-child-porn-new-york-residents-only
- Search – Is a search result containing illegal material also illegal?
 - Probably not. But once the illegality is known, does search engine have duty to delist?

Appendix: Case Studies

- **Google**

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- **India**

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Right to be forgotten

- Basics of data protection law
- Google v Spain – not all data only “no longer relevant data” only search results only search based on petitioner’s name
- Privacy debate over publicly available data– skipped here
 - <http://opennetkorea.org/en/wp/1808> Can you own data about you?
 - <http://opennetkorea.org/en/wp/1569> Fight Discrimination, not Information
- How search works – <http://www.makeuseof.com/tag/how-do-search-engines-work-makeuseof-explains/>
- Search v. hosting – is search data controlling?
- Would that be different if Google does not build search index? Instantaneous crawling?

Jurisdiction for taking down

- If child porno distributed online social media – which country should have jurisdiction to take it down?
- Locus of data → what if move to another locus?
- Locus of child → can't stop data distribution
- Locus of distributor → "Cat out of the bag"
- Locus of physical conduit: filtering (effective?) → Multiple physical conduits.
- Locus of platform → webhost: "cat out of the bag" and distributor can move → search engine?
- CNIL (RTBF), Equustek (trademark right) – Is global takedown justified?
<http://cyberlaw.stanford.edu/blog/2016/11/global-right-be-forgotten-delisting-why-cnil-wrong>;
<https://globalfreedomofexpression.columbia.edu/cases/equustek-solutions-inc-v-jack-2/>

Jurisdiction for accessing information

- What to do when incriminating evidence resides overseas?
- Locus of suspect (data subject)
- Locus of data
- Locus of intermediary (data controller)
- MLAT bypass?
<http://opennetkorea.org/en/wp/1596?ckattempt=1>
- Is global warrant justified?
<http://www.internetjurisdiction.net/twitter/un-special-rapporteur-recommends-creating-an-international-data-access-warrant>

Cross-border data transfer

- Data protection law, basics again.
- Concern with cross-border transfer – adequacy certificate
- US-EU Safe Harbor Agreement, what is it? 5,450 US companies
- **Schrems v. Facebook**
<https://www.irishtimes.com/business/technology/all-you-need-to-know-in-the-max-schrems-facebook-case-1.2965482>
- <https://www.ftc.gov/tips-advice/business-center/guidance/information-eu-residents-regarding-us-eu-safe-harbor-program>
- Discussion: data localization, “China”?
<http://privacylaw.proskauer.com/2017/05/articles/international/a-primer-on-chinas-new-cybersecurity-law-privacy-cross-border-transfer-requirements-and-data-localization/>