INTERNET & **JURISDICTION**

GLOBAL STATUS REPORT **2019**

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EXECUTIVE SUMMARY

INTERNET &
JURISDICTION
P O L I C Y N E T W O R K

"The pioneering Internet & Jurisdiction Global Status Report of the Internet & Jurisdiction Policy Network is the new resource for evidence-based policy innovation for decision makers and shapers who work on legal challenges in cyberspace. It exposes a dangerous spiral of uncoordinated policy making. At a time when the world has never been so interconnected, reactive and quick-fix policy initiatives proliferate. This legal arms race is threatening the future of the cross-border internet, unless actors actively coordinate."

Introduction

The Internet & Jurisdiction Global Status Report 2019 is the world's first comprehensive mapping of internet jurisdiction related policy trends, actors and initiatives. It is based on an unprecedented large-scale data contribution from 150 key stakeholders from the Internet & Jurisdiction Policy Network from: states, internet companies, technical operators, civil society, academia and international organizations.

The surveyed stakeholders send a very **strong message of concern**:

- 95% see cross-border legal challenges on the internet becoming increasingly acute in the next three years;
- Only 15% believe we already have the right institutions to address these challenges; and
- 79% consider that there is insufficient international coordination.

50 years after the creation of the internet, the Report presents strong evidence of a **dangerous trend**: the worldwide multiplication of public and private policy initiatives in an uncoordinated manner will have detrimental consequences. Even when they legitimately aim to address key transnational policy issues, adoption of quick-fix measures under the pressure of urgency often leads to a legal arms race and additional conflicts. Making sure that the fundamental attributes of the internet are preserved requires active steps in the form of **innovative coordination and cooperation efforts**.
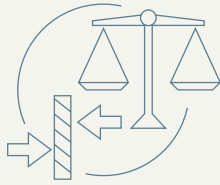
Will cross-border legal challenges on the internet become increasingly acute in the next three years?
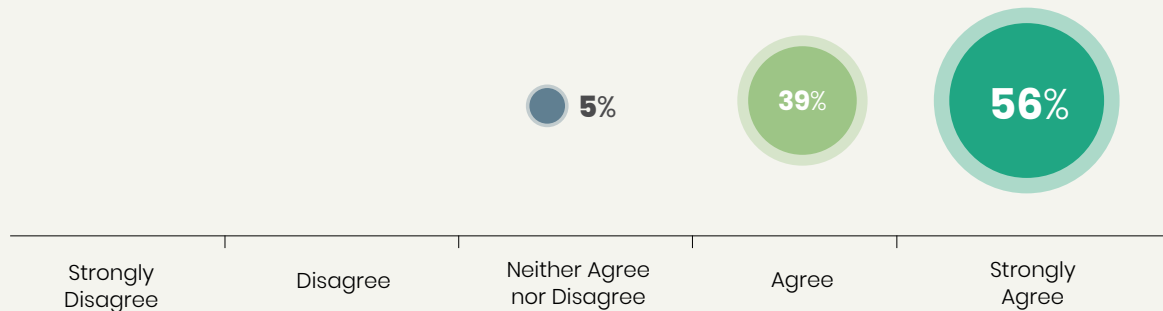
5%

39%

56%

| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree |

SOURCE: Internet & Jurisdiction Policy Network: Internet & Jurisdiction Global Status Report 2019

Issues and initiatives proliferate

Stakeholders express their difficulty to access comprehensive information on numerous and complex policy challenges, as well as to keep track of the proliferating initiatives trying to address them. Yet, consolidated and accessible data is a prerequisite for evidence-based decision-making and policy coherence.

Accordingly, the Report extensively documents the increasing number of **topics of concern** that demand attention, be they related to expression, security or the digital economy. Jurisdictional challenges arise in all instances of online regulation, such as the regulation of:

- Violent extremism, hate, data privacy breaches, and other forms of abuse that may become so prevalent that the online environment becomes 'uninhabitable', while an actual or perceived high degree of misinformation causes a trust crisis;
- Cybercrime and cyber attacks that may durably undermine trust in the online environment and threaten its infrastructure; and
- Commercial activities in relation to which complexity increases the cost of compliance and may create barriers to entry for small and medium enterprises, limiting competition, innovation, and market access across borders.

The Report also documents the increasingly diverse **legal or technical approaches** adopted by governments and private actors to address these issues including:

- Extraterritorial assertion of jurisdiction;
- Private terms of service and community guidelines;
- Mandatory data localization; and
- Geo-blocking.

The Report points to several key challenges when addressing cross-border legal issues, that **put at stake fundamental attributes of the cross-border internet**, such as:

- The lack of common agreement on substantive values between actors, or shared understanding of key legal concepts and vernacular;
- The risk of a "race to the bottom" if extraterritoriality is not implemented with caution;
- Distrust generated amongst internet users who cannot know what laws apply to their online activities;
- Voluntary or involuntary fragmentation, both in a technical and a regulatory sense, may develop to such a degree that it becomes impossible to speak of the internet as a global network; and
- A failure to strike an appropriate balance in the obligations imposed on internet intermediaries may result in an extensive loss of online freedom of expression and the availability of services to the extent that the very nature of the current cross-border internet is affected.

Legal uncertainty dominates

Much of what has been done to date sought to solve global problems through a national lens. However, the constant flux of digital innovation and the transnational nature of the internet makes it increasingly challenging to address online abuses with traditional national legal tools.

Moreover, as transnational interactions become the new normal, people and entities are often unable to determine their "contextual legal environment", i.e.: all the states' laws and other norms that apply to their activity online at a given moment.

Due to extraterritorial assertions of jurisdiction, in some regions, individuals, organizations and even states are concerned that they are subjected to online rules developed without them in a country far away.

A dangerous spiral

A legal arms race of uncoordinated, reactive, and quick-fix public and private policy initiatives, prone to be incompatible, creates a dangerous spiral, detrimental on numerous levels because it:

- Creates competing assertions of jurisdiction where compliance with one state's law unavoidably results in a direct violation of other states' laws;
- Actually prevents actors from efficiently addressing abuses online;
- Hampers digital innovation and growth of the internet economy, especially in developing countries and for SMEs; and
- Favors the rule of the strongest.

This could make cross-border online spaces and activities potentially impossible in the future.
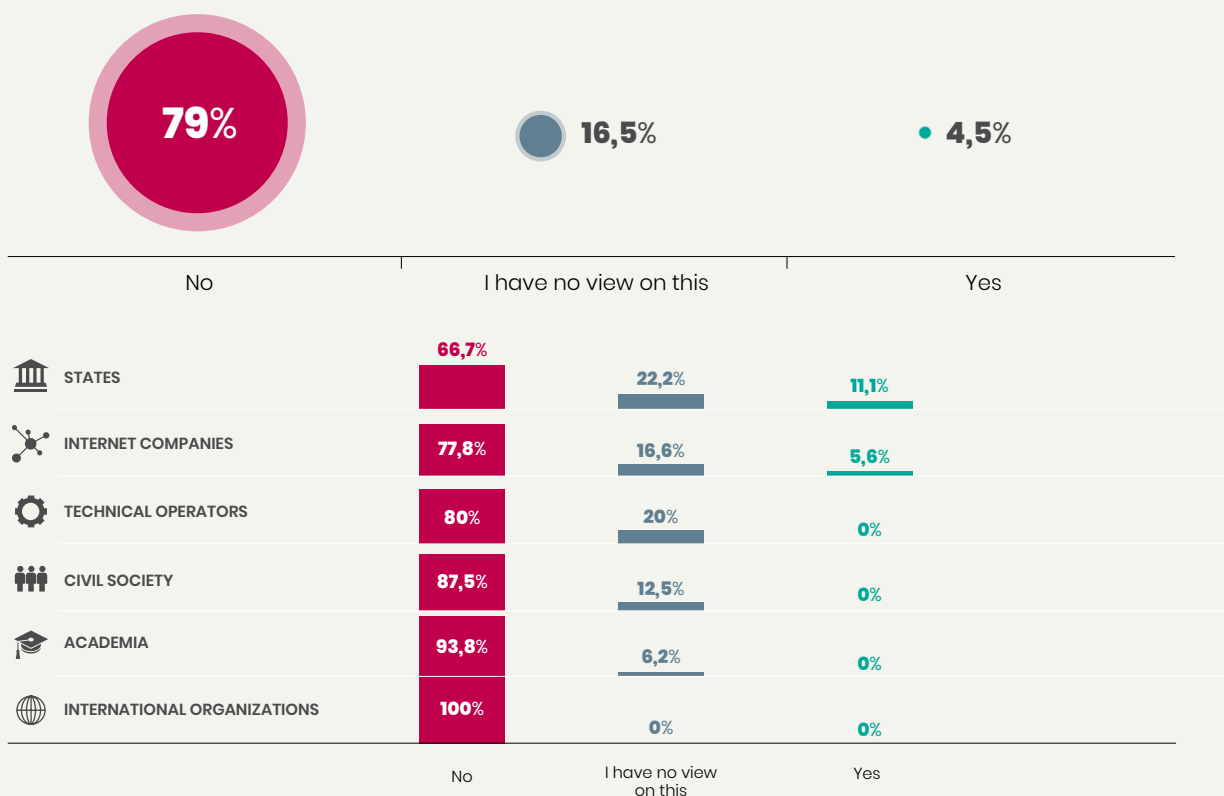
Coordination is a must

The stakes are high: the internet deeply impacts all societies and economies and new regulatory frontiers are constantly emerging, ranging from cryptocurrencies to artificial intelligence. Much like the natural environment is facing a climate change, the online legal environment is now also undergoing a systemic transformation.

There is much that needs to change in order to overcome the cross-border legal challenges. The surveyed stakeholders specifically pointed to the need for:

- More coordination to ensure policy coherence;
- More legal interoperability, through both substantive and procedural standards that are jointly developed;
- Inclusiveness and capacity building, including addressing practical issues such as lack of access to relevant information due to language and cultural barriers, as well as information overload;
- Greater clarity, and a common understanding, of relevant legal concepts;
- Considering the respective roles of the private and the public sector, including a clear need for re-examining and more clearly defining the roles of intermediaries;
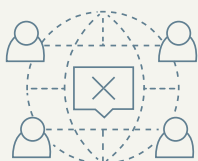
Is there sufficient international coordination and coherence to address cross-border legal challenges on the Internet?

79%   **16,5%**   **4,5%**

No   I have no view on this   Yes

	No	I have no view on this	Yes
STATES	66,7%	22,2%	11,1%
INTERNET COMPANIES	77,8%	16,6%	5,6%
TECHNICAL OPERATORS	80%	20%	0%
CIVIL SOCIETY	87,5%	12,5%	0%
ACADEMIA	93,8%	6,2%	0%
INTERNATIONAL ORGANIZATIONS	100%	0%	0%

SOURCE: Internet & Jurisdiction Policy Network: Internet & Jurisdiction Global Status Report 2019

- Transparency and accountability;
- Pursuing solutions on an issue-by-issue basis, or as clusters of issues;
- Continued, or even expanded, adherence to a multistakeholder approach; and
- A recognition that no state, company or organization can address these issues alone, and that actors in the ecosystem simply cannot afford not to collaborate.

Shaping the future of the digital society

Stakeholders of the Internet & Jurisdiction Policy Network stressed that, in the end, not addressing jurisdictional challenges would come at a high cost: the question now is not whether to regulate but how, and by whom. As pointed out by one surveyed expert, the internet is neither the problem, nor the cause of the problem. Indeed, the internet risks becoming the victim of our lack of appropriate governance mechanisms.

The task that lies before us all demands governance innovation: it involves developing the standards for legal interoperability and policy coordination, so that we are equipped with methods and tools that are as transnational, distributed, scalable and resilient as the internet itself. What is at stake is nothing less than the future of the digital society that we collectively want – for us and for future generations.

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Internet & Jurisdiction Global Status Report 2019

Download: https://www.internetjurisdiction.net/report

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Methodology

Enabling evidence-based policy innovation, the Report provides all stakeholders with the necessary information to develop frameworks and policy standards for the digital society and economy. It gives a comprehensive and regionally balanced overview of past, current and emerging trends, relevant actors and proposed solutions to the major cross-border legal policy challenges facing our connected society.

The Report's findings are based on data coming out of an unprecedented and innovative large-scale collaborative contribution and review process. It leverages the com-bined expertise of the key global stakeholders engaged in the Internet & Jurisdiction Policy Network and beyond, through a combination of structured interviews and data collection procedures. The Report represents a best-effort attempt at painting a broad-brushed, yet comprehensive, overview and documentation of past, current and emerging trends, relevant actors, and proposed solutions to the major cross-border legal policy challenges facing our connected society as of 1 July 2019. As such, it is a timely snapshot of the policy environment and creates a first baseline against which future studies may be undertaken.

From the Community for the Community

Without the valuable insights of the participating survey respondents and interviewees, this Report could not have been produced. Below are just a few entities that have shared their knowledge for this pioneering effort:

Asociación Latinoamericana de Internet (ALAI)

APNIC

Argentina, National Access to Public Information Agency

Global Forum for Media Development

New Zealand, Office of the Privacy Commissioner

Association for Progressive Communications (APC)

AT&T

Association of German Chambers of Industry and Commerce

Germany, Federal Ministry of Justice and Consumer Protection

GSMA

OECD

Brazil, Federal Prosecution Service

Botswana, Communications Regulatory Authority

International Federation of Library Associations and Institutions (IFLA)

United Kingdom, Foreign & Commonwealth Office

Canadian Government

Global Commission on the Stability in Cyberspace

Canadian Internet Registration Authority

Yelp

Nomura Research Institute, Ltd.

Public Interest Registry

Twitter

Canadian International Pharmacy Association

Center for Democracy & Technology

Global Network Initiative

Uruguay, Office of the President

CENTR

CGI.br

Google

International Trademark Association

RIL

Sri Lanka, ICT Agency

NTT

Chen Zuckerberg Foundation

Cloudflare

Institute for Technology and Society of Rio de Janeiro (ITS Rio)

Queen Mary University of London

World Trade Organisation (WTO)

Child Dignity Alliance

Council of Europe

ICANN

Columbia University, Global Freedom of Expression

InternetNZ

Shopify

Telefonica

Stanford Law School Center for Internet and Society

Council of the EU

Computer & Communication Industry Associations (CCIA)

OAS

Latin American Internet Association (ALAI)

Tucows

Costa Rica, Ministry of Science, Technology and Telecommunications

Dangerous Speech Project

Ireland, Department of Justice and Equality

Ranking Digital Rights, New America

United Nations

DENIC eG

Denmark, Ministry of Foreign Affairs

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)

Kenya ICT Action Network (KICTANet)

Universidad Externado de Colombia

DiploFoundation

Mozilla

Registrar of Last Resort

Egypt, National Telecom Regulatory Authority

Domain Name Commission for .nz

Japan, Ministry of Economy, Trade and Industry

Siemens AG

Ferrero

University of Geneva

The Domain Name Association

Electronic Frontier Foundation

ETNO

London Metropolitan Police

European Commission

European Court of Human Rights

New America

Tunisia, Instance Nationale de Protection des Données Personnelles

Fédération Méditerranéenne des Associations d'Internet (FMAI)

Facebook

University of Oxford

Mexico, Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales

Spain, Supreme Court

WAN-IFRA

Finland, National Police Board

The Walt Disney Company

French National Center for Scientific Research (CNRS)

Chile, Ministry of Foreign Affairs

National Law University Delhi

NetChoice

World Bank

USA, Department of Commerce, NTIA

France, Gendarmerie nationale

United Kingdom, Department for Digital, Culture, Media and Sport

Uganda, Communications Commission

Georgia Tech

Wikimedia Foundation

About the Internet & Jurisdiction Policy Network

The Internet & Jurisdiction Policy Network is a multistakeholder organization addressing the tension between the cross-border nature of the internet and national jurisdictions. Its Paris-based Secretariat facilitates a global multistakeholder process to enable transnational cooperation. Participants in the Policy Network work together to preserve the cross-border nature of the Internet, protect human rights, fight abuses, and enable the global digital economy. Since 2012, the Internet & Jurisdiction Policy Network has engaged more than 300 key entities from governments, Internet companies, technical operators, civil society, academia, and international organizations around the world.

Responding to the pressing needs of the global community, the Internet & Jurisdiction Policy Network enables the development of policy standards and shared cooperation frameworks that are as transnational as the internet itself in order to promote legal interoperability and establish due process across borders. The work of the Policy Network is currently structured around three thematic programs: Data & Jurisdiction, Content & Jurisdiction, and Domains & Jurisdiction.

Through multistakeholder Contact and Working Groups in its Programs, regular Global Conferences, as well as regional and thematic meetings, its Secretariat facilitates a neutral dialogue process to build trust among the different actors and help them develop the operational solutions necessary for the coexistence of diverse laws on the cross-border Internet.

The regular Global Conferences of the Internet & Jurisdiction Policy Network are institutionally supported by the Council of Europe, European Commission, ICANN, OECD, United Nations ECLAC, and UNESCO. Partner countries include France (2016), Canada (2018) and Germany (2019). The work of the organization has been presented to and recognized by key international processes, including the UN Internet Governance Forum, G7, G20 or the Paris Peace Forum, and covered in top media outlets such as The Economist, Washington Post, Financial Times, Politico or Fortune. The organization is financially supported by a unique coalition of over 20 governments, companies, and organizations.

STATES

INTERNET COMPANIES

TECHNICAL OPERATORS

CIVIL SOCIETY

ACADEMIA

INTERNATIONAL ORGANIZATIONS

About the Author of the Report

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The full Report that contains this Executive Summary was commissioned by the Secretariat of the Internet & Jurisdiction Policy Network and authored by Professor Dr. Dan Jerker B. Svantesson.

The Internet & Jurisdiction Global Status Report 2019, is published by the Secretariat of the Internet & Jurisdiction Policy Network and **available online at https://www.internetjurisdiction.net/report.**

The author of this Report made a best effort to map the current ecosystem and trends based on desk-research, as well as stakeholder surveys and interviews.

The completeness of information can however not be guaranteed, as this Report constitutes a first global baseline on the state of jurisdiction on the internet. Moreover, the analysis of the author does not necessarily reflect the view of the Secretariat of the Internet & Jurisdiction Policy Network, of stakeholders engaged in the Internet & Jurisdiction Policy Network, or of the financial supporters of the Report.

The Internet & Jurisdiction Policy Network is the multistakeholder organization addressing the tension between the cross-border nature of the internet and national jurisdictions.

Its Secretariat facilitates a global policy process between key stakeholders to enable transnational cooperation and policy coherence. Participants in the Policy Network work together to preserve the cross-border nature of the Internet, protect human rights, fight abuses, and enable the global digital economy. Since 2012, the Internet & Jurisdiction Policy Network has engaged more than 300 key entities from different stakeholder groups around the world, including governments, the world's largest Internet companies, the technical community, civil society groups, leading universities and international organizations.

INTERNET & JURISDICTION
POLICY NETWORK