“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.
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% No | 16.5% I have no view on this | 4.5% Yes

<table>
<thead>
<tr>
<th>STATES</th>
<th>INTERNET COMPANIES</th>
<th>TECHNICAL OPERATORS</th>
<th>CIVIL SOCIETY</th>
<th>ACADEMIA</th>
<th>INTERNATIONAL ORGANIZATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>66.7%</td>
<td>77.8%</td>
<td>80%</td>
<td>87.5%</td>
<td>93.8%</td>
<td>100%</td>
</tr>
<tr>
<td>22.2%</td>
<td>16.8%</td>
<td>20%</td>
<td>12.5%</td>
<td>6.2%</td>
<td>0%</td>
</tr>
<tr>
<td>11.1%</td>
<td>5.6%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

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.
# TABLE OF CONTENTS

INTERNET & JURISDICTION POLICY NETWORK

Internet & Jurisdiction Global Status Report 2019
Download: https://www.internetjurisdiction.net/report

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forewords</td>
<td>02</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>05</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>08</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>14</td>
</tr>
<tr>
<td>Method</td>
<td>18</td>
</tr>
</tbody>
</table>

## Why a Global Status Report, and what is at stake? 20

1.1 Responding to the call from the Internet & Jurisdiction Policy Network 22
1.2 Transnational as the new normal 24
1.3 Growing concern over abuses 26
1.4 Competing legitimate interests need reconciling 29
1.5 Existing legal concepts are under stress 29
1.6 Proper frameworks and institutions are lacking 33
1.7 Coordination is insufficient 35
1.8 Fundamental attributes of the internet are at stake 36
   1.8.1 The cross-border internet cannot be taken for granted 36
   1.8.2 The permission-less nature of the internet needs active protection 39
1.9 Not addressing jurisdictional challenges comes at a high cost 40
1.10 A multistakeholder approach is still desired 41
1.11 A pressing challenge, insufficiently addressed 42

## Overarching Trends 44

2.1 A technological landscape in constant flux 47
   2.1.1 The unification of online and physical worlds 47
   2.1.2 A continuing migration to the cloud 47
2.2 Regulation: not if, but how and by whom 48
   2.2.1 To regulate or not is not the issue 48
   2.2.2 Proliferation of initiatives 50
   2.2.3 An increasing appetite to regulate cyberspace 51
   2.2.4 Information overload and accessibility 52
   2.2.5 Every problem has a solution, but every solution has a problem 54
   2.2.6 Legal uncertainty increases 55
2.3 Rethinking the role of territoriality 57
   2.3.1 An increasing geographic reach of national laws 58
   2.3.2 Challenges of enforceability 59
   2.3.3 When territoriality is irrelevant 60
2.4 Normative plurality, convergence and cross-fertilization 60
   2.4.1 Blurring of categories 60
   2.4.2 Harmonization via company norms 62
   2.4.3 Judicial cross-fertilization – scalability, replication and imitation 62
   2.4.4 Rules are set for – and by – established large actors 64
2.5 New roles for intermediaries 65
   2.5.1 Increasing responsibility bestowed on private operators 65
   2.5.2 (In)voluntary gatekeepers 66
   2.5.3 Appeals and recourse become key issues 69
03

Topical Trends

3.1 Expression
3.1.1 Extremism, terrorism and hate speech
3.1.2 Defamation
3.1.3 Online bullying
3.1.4 Non-consensual distribution of sexually explicit media
3.1.5 Fake News and misinformation
3.1.6 Data privacy

3.2 Security
3.2.1 Cybercrime
3.2.2 Access to digital evidence
3.2.3 Surveillance
3.2.4 Cybersecurity

3.3 Economy
3.3.1 Intellectual property
3.3.2 E-commerce, competition law, marketing restrictions and consumer protection
3.3.3 Taxation – the intersection of jurisdictional complexities and national economy
3.3.4 Internet of Things (IoT) – everything transferring data everywhere
3.3.5 Blockchain – still a solution searching for a problem?
3.3.6 Digital issues in international and regional trade agreements

04

Legal and technical approaches

4.1 Major legal approaches to solutions
4.1.1 Takedown, stay-down and stay-up orders by courts
4.1.2 Race to the highest potential fines
4.1.3 'Rep localization' – forced local representation
4.1.4 Jurisdictional trawling as a regulatory approach
4.1.5 Targeting/directing activities/doing business/effects doctrine'
4.1.6 A common focus on comity, but a lack of agreement
4.1.7 Scope of jurisdiction – local court orders with global implications
4.1.8 Terms of service and community guidelines

4.2 Major technical approaches to solutions
4.2.1 Geo-location technologies – sacrificing 'borderlessness' to safeguard regulatory diversity
4.2.2 Content filtering on the national network level
4.2.3 Domain Name System: court ordered suspension, deletion, non-resolving, seizure and transfer
4.2.4 Domain Name System: court ordered DNS blocking, IP Address blocking or re-routing and URL blocking
4.2.5 Service shutdowns
4.2.6 Internet shutdowns
4.2.7 Mandatory data localization
4.2.8 Artificial Intelligence

05

Relevant concept clusters

5.1 Public international law, private international law (or conflict of laws)
5.2 Sovereignty, jurisdiction, territory and human rights
5.3 Territorial, and extraterritorial, jurisdictional claims
5.4 Due diligence, duty of non-intervention and comity
5.5 Legislative jurisdiction, adjudicatory jurisdiction, investigative jurisdiction and enforcement jurisdiction
5.6 Jurisdiction, choice of law, declining jurisdiction, recognition and enforcement
5.7 Personal jurisdiction, subject matter jurisdiction and scope of Jurisdiction
5.8 Technology neutral, functional equivalence, future proofing
5.9 Data types
5.10 Delist, deindex, de-reference, delete, block, remove, takedown, stay-down
5.11 Registry, registrar, gTLD and ccTLD
5.12 Internet, World Wide Web
5.14 Strong, moderate and weak artificial intelligence
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 combined 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:
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.

About the Author of the Report

Professor Dan Jerker B. Svantesson is based at the Faculty of Law, Bond University (Australia). He is a Visiting Professor at the Faculty of Law, Masaryk University (Czech Republic), an Associate at The Swedish Law & Informatics Research Institute, Stockholm University (Sweden), and a Member of the Internet & Jurisdiction Policy Network’s Data & Jurisdiction Program Contact Group. Since 2001, he specializes in online cross-border legal issues, a topic on which he has published more than 150 books, notes, and journal articles.
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 Secretariat of the Internet & Jurisdiction Policy Network is grateful for the financial and institutional support of the following entities that have enabled the production 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.