

# The Regulation of the Internet through the State and Online Intermediaries

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## Topics

Day 1: Framing the Internet Jurisdiction Debate – Territoriality and Globalisation

Day 2: The State and the *Substantive* Interests Threatened by Global Online Trade and Communications (Diversity of Values – Diversity of Laws)

Day 3: The Role of Intermediaries in Internet Regulation and CSR

## 1. Framing the Internet Jurisdiction Debate – Territoriality and Globalisation

Global problems in a territorially fragmented political/legal world – Is the Internet nothing new under the sun?

### Cross-border Pollution

*Pakootas v Teck Cominco Metals Ltd* 452 F3d 1066 (9<sup>th</sup> Cir 2006) Trail Smelter case

1941 Tribunal:

‘no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.’

District Court (2004)

- Presumption against extraterritoriality is rebutted because the statute was designed to ‘remedy domestic conditions’ (purpose of statute)
- There is also **‘the well-established principle that the presumption is not applied where failure to extend the scope of the statute to a foreign setting will result in adverse effects within the United States’** (effect of act)

Ninth Circuit Court (2006)

- Affirmed ruling on different grounds
- Is this in fact an extraterritorial case at all? No
- Here all ‘operative events’ are local: the ‘facility’ and ‘the release of threatened release’ (necessary under the statute) was in Washington where the ‘slag’ leached the hazardous substances into the water and ground

### Cross-border Fraud

An example of restraint...?

*Morrison v National Australia Bank* 561 US 247 (2010)

s.10(b) of the US Securities Exchange Act (1934)

Supreme Court:

- Presumption against Extraterritoriality would be no more than a ‘craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case’
- the focus of the Act ‘is not upon the place where the deception originated, but upon purchases and sales of securities in the United States.’

## Cross-border Internet Communications

*LICRA and UEJF v Yahoo! Inc and Yahoo France* (Tribunal de Grande Instance de Paris, 20 Nov 2000) <http://www.lapres.net/yahen.html>

History of the Yahoo case:

- *LICRA v Yahoo! Inc & Yahoo France* (Tribunal de Grande Instance de Paris, 22 May 2000)
- *LICRA & UEJF v Yahoo! Inc & Yahoo France* (Tribunal de Grande Instance de Paris, 11 August 2000) – on feasibility of blocking order
- *LICRA & UEJF v Yahoo! Inc & Yahoo France* (Tribunal de Grande Instance de Paris, 20 November 2000)
- *Yahoo! Inc v LICRA & UEJF* 145 F Supp 2d 1168 (ND Cal 2001) (finding in favour of personal jurisdiction)
- *Yahoo! Inc v LICRA & UEJF* 169 F Supp 2d 1181 (ND Cal 2001) (finding in favour of ripeness of the suit, and the unenforceability of the French order based on the First Amendment)
- *Yahoo! Inc v LICRA & UEJF* 379 F 3d 1120 (9<sup>th</sup> Cir 2004) (personal jurisdiction finding reversed)
- *Yahoo! Inc v LICRA & UEJF* 433 F 3d 1199 (9<sup>th</sup> Cir 2006) (ripeness reversed)
- *LICRA v Yahoo! Inc* 126 S.Ct. 2332 (Mem) (2006) US Supreme Court declines to hear an appeal

May 2000 Judgment

Court ordered Yahoo!Inc ‘to take all measure to dissuade and render impossible any access from French territory via yahoo.com to the Nazi artefact auction service or any other site or service that constitutes an apology for Nazism or contesting of Nazi crimes’

France can exercise jurisdiction over Yahoo! Inc in respect of its website [www.yahoo.com](http://www.yahoo.com) because Yahoo!Inc ‘has committed a wrong on the Territory of France, a wrong, the *unintentional nature* of which is apparent’

Expert panel: **Are there technical measures available to allow Yahoo know where there surfers are from and how to stop them?**

Nov 2000 Judgment

‘[W]hile it may be accurate that the site “Yahoo Auctions” in general is intended principally for internauts based in the United States given the nature of the objects

*put on sale, the methods of payment provided, the terms of delivery, the language and the currency used, the same is not true of the sites auctioning objects representing symbols of the nazi ideology which might interest and are accessible to any person who wishes to go to them, including French people...'*

*Yahoo! Inc v LICRA 169 F Supp 2d 1181*

*US court 'may not enforce a foreign order that violates the protections of the United States Constitution by chilling protected speech that occurs simultaneously within our borders'*

*R v Toeben (BGH, Urt V 12.12.2000-1 St T 184/00)*

## **The General Principles? Territoriality (Subjective and Objective Territoriality)**

### **At international level**

*The Case of the SS 'Lotus' (France v Turkey) (1927) PCIJ Reports, Series A, No. 10*

*'it appears to be now universally admitted that, where a crime is committed in the territorial jurisdiction of one State as the direct result of the act of a person at the time corporeally present in another State, international law, by reason of the principle of constructive presence of the offender at the place where his act took effect, does not forbid the prosecution of the offender by the former State, should he come within its territorial jurisdiction.'* [73]

### **Territoriality implemented...**

US

*Pennoyer v Neff 95 US 714 (1887)*

*International Shoe Co v Washington 326 US 310 (1945)*

- *To bring an action against an absent defendant in a US court, the defendant has to have had 'minimum contacts' with the forum, so much so that the maintenance of suit would not offend 'traditional notions of fair play and substantial justice.'* [316]
- *This built upon the traditional 'presence' requirement by saying that the term merely symbolises the activities of a corporation in the forum, which in turn meant that whether there were sufficient contacts depended on 'the quality and nature of the activity in relation to the fair and orderly administration of the laws...'*

*Territoriality abandoned? NO*

*'increased physical mobility due to automobiles and other modern transportation placed this jurisdictional basis under severe strain, as did disputes over "virtual" entities such as corporations that have no physical situs...As a response to the imminent collapse of jurisdiction based on physical presence, the Supreme Court configured new rules based upon a kind of "virtual" presence.'* [Dan L Burk, 'Jurisdiction in a World Without Borders' (1997) 1 Virginia Journal of Law and Technology 1522, para 25f]

## Enforcement Jurisdiction (and compliance)

Part and parcel of the wide principle of non-interference

Art 8 of the Montevideo Convention on the Rights and Duties of States (1934)

‘No state has the right to intervene in the internal or external affairs of another.’

*The Case of the SS ‘Lotus’ (France v Turkey)* (1927) PCIJ Reports, Series A, No. 10, 18.

‘[T]he first and foremost restriction imposed by international law upon a State is that – falling the exercise of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or a convention.’

A State is not allowed to engage in public acts on the territory of another State without the latter’s permission.’

‘public act’?

one which is ‘by its nature, an act which only the officials of the local State are entitled to perform, as opposed to an act which private individuals may perform.’ (Akehurst, 146)

### Summary of ‘jurisdictional’ categorisation

	Adjudicative/judicial Which court?	Legislative/prescriptive Which law?	Executive Enforcement
Civil and commercial law			
Criminal/regulatory law			

- Civil or criminal? How do you know?
- What if a law can be enforced both by a private person and the state?

### Questions

Is there a difference in the application of the territoriality principle between online and offline events?

What is the effect of the judgement for different stakeholders (i.e. states, content providers, users, global internet community)?

What, if any, are the alternatives to the approach taken by the French court?

## 2. The State and the Substantive Interests Threatened by Global Online Trade and Communications

### Cultural Diversity – Legal Diversity

- ‘cultural diversity’ – where does it come from? Is it worth protecting?
- Should legal harmonisation or convergence be aimed at in order to address these jurisdictional problems?

Free Speech OR Privacy/Data Protection?

EU: *Google Spain SL and Google Inc v Agencia Española de Protección de Datos C-131/12* (13 May 2014)

Territorial Scope?

Article 4 of the **Data Protection Directive 95/46/EC**

1. Each Member State shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data where:
  - (a) **the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State; when the same controller is established on the territory of several Member States, he must take the necessary measures to ensure that each of these establishments complies with the obligations laid down by the national law applicable;**
  - (b) the controller is not established on the Member State's territory, but in a place where its national law applies by virtue of international public law;
  - (c) the controller is not established on Community territory and, for purposes of processing personal data makes use of equipment, automated or otherwise, situated on the territory of the said Member State, unless such equipment is used only for purposes of transit through the territory of the Community.
2. In the circumstances referred to in paragraph 1 (c), the controller must designate a representative established in the territory of that Member State, without prejudice to legal actions which could be initiated against the controller himself.

CJEU

‘the activities of the operator of the search engine and those of its establishment situated in the Member State concerned are inextricably linked since the activities relating to the advertising space constitute the means of rendering the search engine at issue economically profitable and that engine is, at the same time, the means enabling those activities to be performed.’ [56]

Google used the local establishment that ‘orientates’ its activities towards the inhabitants of the particular Member State [60] (i.e. a targeting approach?)

the broad territorial scope of the Directive was necessary to ensure the ‘effective and complete protection’ of persons in the EU under data protection law. [53-54]

Does Google’s data protection obligation under the Directive also extend to Google’s non-European domains, which do not target Europe (e.g. com or .jp) ?

YES - see Article 29 Data Protection Working Party, *Guidelines on the Implementation of the Court of Justice of the European Union Judgement on “Google Spain and Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González”* C-131/12 (26 November 2014) [7]

An alternative approach: *(A Young Person) v Facebook Incorporated & Anor* [2015] NIQB 61 (25 June 2015) [33] where the judge made an order against Facebook, not on the country-specific basis, but rather applicable to the English language sector of Facebook.

### **How does the new GDPR deal with the territorial scope of European data protection?**

Art 3 of the General Data Protection Regulation (EU) 2016/679

[http://ec.europa.eu/justice/data-protection/reform/files/regulation\\_oj\\_en.pdf](http://ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf)

#### Territorial Scope

- (1) This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.
- (2) This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:
  - (a) The offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
  - (b) The monitoring of their behaviour as far as their behaviour takes place within the Union.
- (3) This Regulation applies to the processing of personal data by a controller not established in the Union, but in place where Member State Law applies by virtue of public international law.

Is the CJEU protecting the economic freedom of European users to deal with ‘their’ personal data – as a type of property - in a way that benefits them? Is this a form of economic protectionism? What are the speech implications of this protectionism? Does it make a difference whether the transnational/jurisdictional arguments are framed and constructed in speech (human rights) rather than trade terms (economic freedoms)?

### **Why can the US not just adopt the same data protection standards?**

### **Are international human rights standards at all helpful in resolving these cultural disputes?**

International Covenant on Civil and Political Rights (1966)

#### **Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 20 (strong objections to this from the US)**

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

## Protection of National Economic Interests

### Online Gambling and free trade

*United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services* first heard by the WTO Dispute Settlement Panel (WTO Panel, 10 November 2004, WT/DS285/R) and then by the Appellate Body (WTO Appellate Body, 7 April 2005, WT/DS285/AB/R)

*Criminal Proceedings against Piergiorgio Gambelli C-243/01* [2003] ECR I-13031  
*Zeturf Ltd C-212/08* (Judgment of 30 June 2011)

### 3. The Role of Intermediaries in Internet Regulation and CSR

#### Dis-intermediation on the Internet? Yes and no

‘When means of dissemination were handwritten and thus at their scarcest, the Church served as gatekeeper for sacred and lesser-blessed but still worthy texts. The printing press took down this gate, but installed in its stead the government and soon commercial enterprises to regulate the new flow of information. In the twentieth century, the broadcast media of radio and television radically increased the flow of information again, yet government and commercial gatekeeping continued unabated . . . The question for gatekeeping in the digital age will be: with the Web removing the technological and economic reasons for the pre-sorting of information, will the public still look to gatekeepers to provide an imprimatur of what is best to read, see, and hear or will audiences seek out and ratify a more direct relationship with creators?’ (Paul Levinson, *Digital McLuhan*, 220)

#### What are the key sources of the problems for online regulation?

- GLOBAL - Default global nature of online communications – jurisdictional problems
  - Regulatory solution: territorial fragmentation of the internet using online *intermediaries*
- SCALE - Everyone can be a speaker (i.e. absence of gatekeepers) - previously mass communications were one-to-many communications, now many to many
  - Regulatory solution: co-opt new gatekeepers i.e. *intermediaries* (that censor and also simply ‘watch’ and thereby incentivise self-censorship)

#### Regulation through surveillance/self-censorship?

Michel Foucault, *Discipline and Punish – The Birth of the Prison* (Penguin, 1977)

Bentham’s perfect prison constructed as a Panopticon =

*Scarlet Extended SA v SABAM—Société belge des auteurs, compositeurs et éditeurs* (2011) C-70/10 (CJEU, 24 November 2011)

CJEU observed that a filtering and blocking system to be installed by the ISP to detect piracy by subscribers, would monitor all incoming and outgoing traffic and thus affect all users’ right to privacy...

#### Intermediaries - Who are they?

##### Factual Spectrum

For example, whose ‘help’ will you need if you want to leave a comment on online news story and who is it you are communicating to?

##### Legal Spectrum depending on Knowledge/Control over the Content

Often the question how much knowledge or control any middleman *actually has* or *could have* is informed by the normative question of how much knowledge and control the middle man *should have* in light of any direct or indirect *benefits* it receives from the communication

### Intermediaries - are they 'neutral' messengers?

Because

- **They merely organise** the material by others (no own material)...?
- The organising of material is **automated** with the help of algorithms...?
- They are not acting on behalf of one party rather than the other...?

For example, is Google 'neutral' in respect of its search results?

### Attractions and concerns about drawing intermediaries into the regulatory circle?

In considering legal regulation of the Internet, there is an important distinction between large players, which one might call 'elephants', and small, mobile actors called 'mice'. The style of regulation against elephants and mice differs substantially. Elephants are large, powerful, and practically impossible to hide. Consider a transnational corporation that has major operations in a country. If that country has strict regulations, the corporation's actions will be highly visible, and it may become an enforcement target if it flouts the law. At the same time, elephants are enormously strong and have all sorts of effects on the local ecosystem (potentially crushing trees, smaller animals, etc.). If a particular regulation angers an elephant, it may have the ability to change the rule. The situation is quite different for mice, which are small, nimble, and multiply annoyingly quickly ... Would-be regulators can run around furiously with a broom, but with little chance of getting rid of all the mice. Peter P Swire, 'Of Elephants, Mice, and Privacy: International Choice of Law and the Internet' (1998) 32 *International Lawyer* 991, 1019ff.

### Intermediary Immunities

#### US

##### **s 230 of the Communications Decency Act of 1996**

'Protection for "Good Samaritan" blocking and screening of offensive material'

##### **(1) Treatment of publisher or speaker**

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

- applies across various legal subject-matters e.g. defamation, negligence, harassment, but also the sale and distribution of child abuse images, privacy infringements or fraudulent information

- excludes from its scope liability under federal criminal law and intellectual property law Section 230(e)(1) and (e)(2)

### Digital Millennium Copyright Act of 1998

- Creates notice-and-takedown duties for online intermediaries in respect of copyright violation

## Europe

### Electronic Commerce Directive 2000/31/EC

#### Section 4: Liability of intermediary service providers

#### Article 12 "Mere conduit"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the *automatic, intermediate and transient storage of the information* transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

**3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.**

e.g. Art 8(3) of the Information Society Directive (applicable to copyright), Art 11 of the Enforcement Directive (applicable to IP generally)

#### Article 13 "Caching"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- (a) the provider does not modify the information;
  - (b) the provider complies with conditions on access to the information;
  - (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
  - (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information;
- and

(e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

**2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.**

e.g. Art 8(3) of the Information Society Directive (applicable to copyright), Art 11 of the Enforcement Directive (applicable to IP generally)

#### Article 14 Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

**3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.**

e.g. Art 8(3) of the Information Society Directive (applicable to copyright), Art 11 of the Enforcement Directive (applicable to IP generally)

#### Article 15 No general obligation to monitor

**1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.**

2. Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

### Who should bear the monitoring duty?

Old versus New Industries?

Incidental tool /mere facilitator	Intermediary	Co-creator/Publisher of the Communication
No liability But some regulatory duties e.g.	Liability but only on failure to act on notice of the wrongdoing, but no monitoring obligations	Primary liability and <b>monitoring duties</b>
e.g. ISPs, search engines?	e.g. eBay, Facebook and other social networking sites, search engines?	e.g. Wikipedia and other hosts that have 'editorial' control

*L'Oréal SA and Others v eBay International AG and Others* C-324/09 (CJEU, 12 July 2011)

**More recent developments in Europe**

- Intermediaries and hate speech
- Intermediaries and copyright

## Required reading

- David R. Johnson and David G. Post, 'Law And Borders: The Rise of Law in Cyberspace' (1996) 48 *Stanford Law Review* 1367  
<https://cyber.law.harvard.edu/is02/readings/johnson-post.html>
- Peter Swire, 'Of Elephants, Mice, and Privacy: International Choice of Law and the Internet' (August 1998) <http://ssrn.com/abstract=121277>
- Jan Oster, 'Which Limits on Freedom of Expression are Legitimate? Divergence of Free Speech Values in Europe and the US' in Uta Kohl (ed), *Net and the Nation State – Multidisciplinary Perspectives on Online Governance* (CUP, 2017)
- Uta Kohl and Diane Rowland, 'Censorship and Cyberborders through EU Data Protection Law' in Uta Kohl (ed), *Net and the Nation State – Multidisciplinary Perspectives on Online Governance* (CUP, 2017)

(the latter two will be handed over to the participants)

## Recommended reading

- Michael Akehurst, 'Jurisdiction in International Law' (1972-73) 46 *British Yearbook of International Law* 145
- Frederick A Mann, 'The Doctrine of Jurisdiction in International Law' (1964) 111 *Recueil Des Cours* 1
- Frederick A Mann, 'The Doctrine of International Jurisdiction Revisited After Twenty Years' (1984) 186 *Recueil Des Cours* 9
- Rachael Doyle, 'The Presumption Against Extraterritoriality: *Pakootas v Teck Cominco Metals Ltd* and Transboundary Environmental Harm after *Morrison v National Australia Bank Ltd*' (2012) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2070852](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2070852)
- Uta Kohl, *Jurisdiction and the Internet – Regulatory Competence over Online Activity* (CUP, 2007) Chapter 1 and Chapter 3  
[https://www.academia.edu/31849063/Eggs\\_Jurisdiction\\_and\\_the\\_Internet](https://www.academia.edu/31849063/Eggs_Jurisdiction_and_the_Internet)
- Uta Kohl, 'Barbarians in Our Midst: 'Cultural Diversity' on the Internet' (2014) 5(1) *European Journal of Law and Technology* <http://ejlt.org/article/view/304/426>
- Fleming Rose, *The Tyranny of Silence: How One Cartoon Ignited a Global Debate on the Future of Free Speech* (15 Feb 2015) <http://www.cato.org/events/tyranny-silence> - on self-censorship, diversity of speech and the growth of offensive speech in a multicultural society
- Neville Cox, 'Blasphemy, Holocaust Denial, and the Control of Profoundly Unacceptable Speech' (2014) 62 *American Journal of Comparative Law* 739
- Moeen Cheema, Adeel Kamran, 'The Fundamentalism of Liberal Rights: Decoding the Freedom of Expression under the European Convention for the Protection of Human Rights and Fundamental Freedoms' (2014) 11 *Loyola University Chicago International Law Rev* 79
- Richard J Peltz-Steele, 'The New American Privacy' (2013) 44 *Georgetown Journal of International Law* 365
- Andrew R W Hughes, 'Does the United States have an Answer to the European Right to Forgotten?' (2014) 7 *Landslide* 18

- Christine Hurt, 'Protecting Gambling or Protecting Gambling? The Economic Dimension of Borderless Online 'Speech'' in Uta Kohl (ed), *Net and the Nation State – Multidisciplinary Perspectives on Online Governance* (CUP, 2017)
- Julia Hornle, Brigitte Zammit, *Cross-border Online Gambling Law and Policy* (Edward Elgar, 2010)
  
- Uta Kohl, 'Intermediaries within Online Regulation' in Rowlands, Kohl, Charlesworth, *Information Technology Law* (5th ed, 2016, Routledge) on academia.edu
- Jan Oster, 'Liability of Internet Intermediaries for Defamatory Speech – an Inquiry into the Concepts of 'Publication' and 'Innocent Dissemination' (2013) Society of Legal Scholars, Edinburgh Conference 2013  
<http://www.archive.legalscholars.ac.uk/edinburgh/restricted/download.cfm?id=336>
- Jonathan Zittrain, 'A History of Online Gatekeeping' (2006) 19 *Harvard Journal of Law and Technology* 253  
[http://bishop.hul.harvard.edu/bitstream/handle/1/4455491/Zittrain\\_History%20of%20Online%20Gatekeeping.pdf?sequence=1](http://bishop.hul.harvard.edu/bitstream/handle/1/4455491/Zittrain_History%20of%20Online%20Gatekeeping.pdf?sequence=1)
- Mac Sithigh, 'The Fragmentation of Intermediary Liability in the UK' (2013) 8 *Journal of Intellectual Property Law & Practice* 521  
[http://www.research.ed.ac.uk/portal/files/15366833/Fragmentation\\_OA.pdf](http://www.research.ed.ac.uk/portal/files/15366833/Fragmentation_OA.pdf)
- UNESCO, *Fostering Freedom Online: the Role of Internet Intermediaries* (19 January 2015)  
<http://unesdoc.unesco.org/images/0023/002311/231162e.pdf> (211 pages)
- Emily B. Laidlaw, 'A framework for identifying Internet information gatekeepers' (2010) 24 *International Review of Law, Computers & Technology* 263
- Emily B Laidlaw, *Regulating Speech in Cyberspace: Gatekeepers, Human Rights and Corporate Responsibility* (CUP, 2015)

Other interesting reading:

- Paul Levinson, *The Soft Edge – A Natural History and Future of the Information Revolution* (Routledge, 1998)
- Victor Mayer-Schonberg and Kenneth Cukier, *Big Data: A Revolution That Will Transform How We Live, Work and Think* (Eamon Dolan/Mariner Books, 2014)